

140036-cv(L), 140037-cv(XAP)

United States Court of Appeals
for the
Second Circuit

WILLIAM NOJAY, THOMAS GALVIN, ROGER HORVATH, BATAVIA
MARINE & SPORTING SUPPLY, NEW YORK STATE RIFLE AND PISTOL
ASSOCIATION, INC., WESTCHESTER COUNTY FIREARMS OWNERS
ASSOCIATION, INC., SPORTSMEN'S ASSOCIATION FOR FIREARMS
EDUCATION, INC., NEW YORK STATE AMATEUR TRAPSHOOTING
ASSOCIATION, INC., BEDELL CUSTOM, BEIKIRCH AMMUNITION
CORPORATION, BLUELINE TACTICAL & POLICE SUPPLY, LLC,

Plaintiffs-Appellants-Cross-Appellees,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume 4 of 9 (Pages A-855 to A-1114)

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(For Continuation of Appearances See Inside Cover)

– v. –

ANDREW M. CUOMO, Governor of the State of New York, ERIC T.
SCHNEIDERMAN, Attorney General of the State of New York, JOSEPH A.
D’AMICO, Superintendent of the New York State Police,

Defendants-Appellees-Cross-Appellants,

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LAWRENCE FRIEDMAN,

Defendants-Appellees.

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case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 1	28	0	0	No	
A 2	100	10	0	Yes	No
A 3	18	0	0	No	
A 4	120	40	0	Yes	No
A 5	12	0	0	Yes	No
A 6	80	40	0	No	
A 7	275	25	0	No	
A 8					
A 9	0	0	0		
A 10	0				
A 11	2	5	0	Yes	Yes
A 12	12	0	0	Yes	No
A 13	10	6	0	No	No
A 14	5	7	0	No	
A 15	0	0	0		
A 16	20	0	0	No	No
A 17					
A 18	0	0	0	No	
A 19	17	6	0	No	
A 20	30	8	0	No	
A 21	117	7	0	Yes	No
A 22	160	0	0	Yes	No
A 23	23	1	0	Yes	No
A 24	100	5	0	Yes	No
A 25	210	10	0	Yes	No
A 26	12	4	1	Yes	Yes
A 27	24	3	0	Yes	No
A 28	20	15	0	Yes	No
A 29	4	0	0	No	No
A 30	4	0	0	Yes	No
A 31	100	5	0	No	No
A 32	1	0	0	No	No
A 33			0	No	No
A 34	142	1	0	No	
A 35	78	2	0	Yes	No
A 36	600	200		No	
A 37	20	13	1	No	
A 38	45	15	0	No	
A 39	100	10	0	No	
A 40	80	6	2	Yes	No
A 41	250	25	0	Yes	No
A 42	4	0	0	No	
A 43	14	2	0	No	No
A 44	171	15	0	Yes	No
A 45	54	6	0	Yes	No
A 46	10	6	0	No	
A 47	0	0	0	No	No
A 48	24	0	0	No	
A 49	180	2	0	Yes	No
A 50					
A 51					

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case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 52	24	16	0	No	
A 53	600	100	12	No	
A 54	18	6	0	No	
A 55	0	0	0	No	
A 56	0	0	0	No	
A 57	40	4	0	No	
A 58					
A 59	40	10	0	No	No
A 60	60	2	0	No	No
A 61	63	4	0	Yes	No
A 62	40	4	0	No	
A 63	8	0	0	Yes	No
A 64	27	1	0	Yes	No
A 65	50	9	0	Yes	No
A 66	35	2	0	No	
A 67	6	0	0	Yes	No
A 68	6	3		No	
A 69	50	20	0	No	
A 70		0	0	Yes	No
A 71	27	1	0	Yes	
A 72	85	0	0	Yes	No
A 73	56	24	0	Yes	No
A 74	25	25	0	Yes	No
A 75	100	20	0	No	
A 76	50	15	3	No	
A 77	15	4	0	No	
A 78	12	0	0	Yes	No
A 79	75	0	0	No	
A 80					
A 81	0	0	0	No	
A 82	0	0	0	No	
A 83	12	4	0	No	No
A 84	40	0	0	Yes	No
A 85	24	0	0	No	
A 86	17	0	0	No	No
A 87	16	3	0	Yes	No
A 88	45	10	0	No	
A 89	11	7	7	Yes	Yes
A 90	35	1	0	Yes	No
A 91	25	2	0	Yes	No
A 92	0	0	0		
A 93	75	40	0	Yes	No
A 94	60	2	0	Yes	No
A 95	26	0	0	No	
A 96	20	0		No	No
A 97	65	11	0	Yes	No
A 98	40	5	0	Yes	No
A 99	26	5	0	No	
A 100	13	2	0	No	
A 101					
A 102	45	6	0	No	No

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case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 103	120	4	0	No	
A 104				Yes	
A 105	150	50	0	No	No
A 106	80	20	0	Yes	No
A 107	40	0	0	No	No
A 108	10	0	0	No	
A 109	160	40	0	Yes	No
A 110	10	10	0	No	No
A 111	6	0	0	No	
A 112					
A 113	150	150	100	Yes	Yes
A 114	50	25	0	No	No
A 115	19	0	0	Yes	No
A 116	80	3	0	No	
A 117	40	10	0	Yes	No
A 118					
A 119	50	0	0	Yes	No
A 120	0	0	0	No	
A 121	0	0	0		
A 122	120	15	0	Yes	No
A 123	10	0	0	Yes	No
A 124	22	0	0	Yes	No
A 125	40	40	20	No	
A 126	50	10	0	Yes	No
A 127	60	20	0	Yes	No
A 128	14	0	0	No	No
A 129	13	16	4	No	
A 130	80	4	0	Yes	No
A 131	12	2	0	Yes	No
A 132		4	0	Yes	No
A 133	50	26	7	No	No
A 134	12	0	0	No	
A 135	2	10	3	No	
A 136	2	1	1	Yes	No
A 137	28	0	0	Yes	No
A 138	45	10		No	
A 139	46	59	0	Yes	No
A 140			0	Yes	No
A 141	40	10	0	No	No
A 142	70	20	0	Yes	No
A 143	50	3	0	No	No
A 144	60	6	0	Yes	No
A 145	140	0	0	Yes	No
A 146	20	4	1	Yes	No
A 147	10	1	0	Yes	No
A 148	0	0	0	No	No
A 149	37	0	0	Yes	No
A 150			0	Yes	No
A 151	6	10	0	No	No
A 152	110	5	0	No	
A 153	15	17		Yes	No

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case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 154	18	4	0	No	
A 155	25	3	0	Yes	No
A 156	60	6	3	No	
A 157	20	0	0	No	
A 158	88	46	0	No	No
A 159	68	19	3	Yes	Yes
A 160	25	5	0	No	
A 161	15	0	0	No	
A 162	75	10	0	No	
B 1				No	
C 1	25	0	0	Yes	No
C 2	55	10	6	Yes	Yes
C 3	60	30	0	No	
C 4	80	20	0	No	
C 5	10	0	0	No	No
C 6	25	6	0	No	
C 7	66	10	1	No	
C 8	24	0	0	Yes	No
C 9	10	15	15	No	
C 10	35	15	9	Yes	Yes
C 11			0	No	
C 12					No
C 13	25	10	0	No	
C 14	60	20	0	Yes	No
C 15	20	0	0	Yes	No
C 16	14	0	0	No	
C 17		0	0	Yes	No
C 18	18	25	5	Yes	Yes
C 19	125	50	5	Yes	No
C 20	20	5	2	No	
C 21		0	0	Yes	No
C 22	30	0	0	No	No
C 23	150	20	0	Yes	No
C 24	60	0	0	No	
C 25	16	7	6	Yes	Yes
C 26	300	650	400	No	
C 27	20	15	8	Yes	Yes
C 28	3	5	2	No	
C 29	45	6	0	Yes	No
C 30				No	
C 31	30	0	0	Yes	No
C 32			0	Yes	No
C 33	35	4	0	Yes	No
C 34	25	5	0	Yes	No
C 35				Yes	No

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Q4. Three most commonly used rifles				
case	Make	Other Make	Model	Caliber
A 1				
A 2				
A 3				
A 4	Browning		BAR	300
A 5				
A 6	Remington		742	30.06
A 7	Browning		BAR	30.06, .270, 7MM, 300 Mag
A 8				
A 9				
A 10				
A 11	Remington		740-7400	20, 30
A 12				
A 13	Remington		700	7 mm mag
A 14	Remington		7400	270
A 15				
A 16				
A 17				
A 18				
A 19	Browning			30.06
A 20	Remington		742	30.06
A 21				
A 22				
A 23	Browning		?	300 mag
A 24	Remington			30.06
A 25	Remington			30.06
A 26	Browning		BAR	30.06
A 27	Remington			30.06
A 28		?	?	06
A 29				
A 30				
A 31	Browning		automatics	
A 32				
A 33				
A 34	Remington			.3006
A 35	Browning			7 mm
A 36	Browning			30.06
A 37	Browning		BAR	30.06
A 38	Browning		br	7 mm, 300win, 30.06
A 39	Remington		7600	.270 win, .30-06, .280 rem
A 40	Browning		Bar mark II	300 win mag
A 41	Remington			
A 42				
A 43	Remington		7600	243 - 7 mm mag
A 44				30.06, 300 winmag, .338, 270
A 45	Browning		BAR Automatic	30.06

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Q4. Three most commonly used rifles				
A 46	Browning		BAR	7 mm, 30.06
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Browning		BAR	7 mm mag/30.06
A 53	Browning		BAR	30.06, 300 wm
A 54	Browning		BAR	30.06
A 55				
A 56				
A 57	Browning		semi-auto	300 mag
A 58				
A 59				
A 60				
A 61	Browning			30.06
A 62	Browning			7 mm
A 63	Browning		BAR	.270 - 300 win mag
A 64	Browning		BAR	30.06
A 65	Browning		semi-auto	.308
A 66	Browning			
A 67				
A 68	Remington		7400	30.06
A 69	Browning			
A 70				
A 71	Browning		Not sure	
A 72				
A 73	Browning		BARR	30.06
A 74	Browning		BAR	300
A 75	Remington		7400 old 752	270 and 30.06
A 76	Browning		BAR	308, 30.06, 300win, 338 win
A 77	Remington			308
A 78	Browning			300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				30 caliber or bigger for elk
A 84				
A 85				
A 86				
A 87	Browning			30.06 and 7 mm
A 88	Browning		BAR	7 mm, .300, .270
A 89	Other	Russian	SKS	7.62
A 90	Browning			1 or 2 in over 50 years
A 91	Browning			300 win mag

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Q4. Three most commonly used rifles				
A 92				
A 93				
A 94	Browning		BAR	
A 95				
A 96				
A 97	Browning		BAR	300-06-270
A 98	Browning			300, 30.06
A 99	Other	Savage		7 mm
A 100	Browning		?	7 mm mag
A 101				
A 102	Browning	Only 1 I recall	BAR	30.06
A 103				
A 104				
A 105				
A 106	Browning		BAR	300 win mag
A 107				
A 108				
A 109	Browning			30.06
A 110	Remington		700	30.06, 270, 7 mm
A 111				
A 112				
A 113	Other	Weatherby		300 mag
A 114	Browning			7 m mag
A 115				
A 116				
A 117	Browning			
A 118				
A 119				
A 120				
A 121				
A 122	Browning		U/K	.338 mag
A 123				
A 124				
A 125				
A 126	Remington		742	243, 30.06
A 127	Winchester		?	30.06
A 128	Winchester			270, 306
A 129	Browning		BAR	7 mm and 243
A 130	Browning			30.06
A 131	Browning		BAR	.7 mm mag
A 132	Remington			30.06
A 133			AK 47	223
A 134				
A 135	Remington			270
A 136	Browning		BAR	
A 137				

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Q4. Three most commonly used rifles				
A	138	Winchester		30.06
A	139	Browning	BAR	270, 7 mm
A	140	Browning		7 mm
A	141			
A	142	Browning		7 mm mag
A	143			
A	144	Browning		30.06
A	145			
A	146	Browning	BDL	7mg
A	147	Browning	BAR	308
A	148			
A	149			
A	150	Remington		
A	151	Browning	BAR	308
A	152	Remington		various 270 - 338
A	153	Browning		30
A	154	Browning	BAR	7 mm mag
A	155			30.06
A	156	Other	BAR	
A	157			
A	158	Remington	280	280
A	159	Browning		7 mm mag
A	160	Remington	Semiauto	30.06
A	161			
A	162	Browning		30.06
B	1			.308, 30-06, .270
C	1			
C	2	Other	AK-47	Antelope Hunter 30
C	3	Browning	Auto	30.06
C	4	Browning	Bar	7mm
C	5			
C	6			
C	7	Browning		30.06
C	8			
C	9	Other	FN-FAL	308
C	10	Remington	742	30.06
C	11	Browning		306
C	12			
C	13	Remington		.06 - 7mm
C	14	Browning	BAR	7mm
C	15			
C	16			
C	17			
C	18	Ruger	Ranch Rifle	223
C	19	Other	AK47	
C	20	Browning	BAR	300 win mag

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Q4. Three most commonly used rifles				
C 21	Other	Bolt-action or pump		
C 22				
C 23	Browning			30.06
C 24				
C 25	Other	AK47		7.62-39
C 26	Other	HK	93	.308
C 27	Browning		BAR	7mm
C 28	Other	Norinco	SKS Type 56	7.62X39
C 29	Browning		BAR	30.06 -.300
C 30				
C 31				
C 32	Browning			3.06 - 7mm
C 33	Remington			30.06
C 34	Remington		741	.270 - 30.06
C 35	Remington			.270
A 1				
A 2				
A 3				
A 4	Remington		7400	30.06
A 5				
A 6	Browning			30.06
A 7	Remington		700	30.03, 270, 7 mm
A 8				
A 9				
A 10				
A 11	Winchester		100	30
A 12				
A 13	Winchester		70	300 mag
A 14	Remington		7400	30.06
A 15				
A 16				
A 17				
A 18				
A 19	Remington		7400	30.06
A 20	Browning			7 mm mag
A 21				
A 22				
A 23				
A 24	Browning			30.06
A 25	Browning			30.03 to 300 mag
A 26	Remington		Fieldmaster	30.06
A 27				
A 28				
A 29				
A 30				
A 31	Remington		automatics	

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Q4. Three most commonly used rifles				
A 32				
A 33				
A 34				
A 35				
A 36	Remington			270 - 30.06
A 37	Remington		7400	30.06
A 38				
A 39	Browning		BAR	.270 win, 7 mm mag
A 40	Remington		7400	30.06
A 41	Browning			
A 42				
A 43	Browning		BAR	243 - 7 mm mag
A 44				
A 45				
A 46	Remington		1100	12 gauge
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Remington		7400	30.06
A 53	Remington		7400/742	30.06
A 54				
A 55				
A 56				
A 57	Remington		semi-auto	30.06
A 58				
A 59				
A 60				
A 61	Other	Savage		7 mm mag
A 62	Remington			30.06
A 63	Remington		742	.270 - 30.06
A 64				
A 65	Winchester		semi-auto	.308
A 66	Remington			
A 67				
A 68	Remington		7400	.308
A 69	Remington			
A 70				
A 71	Remington		742	30.06
A 72				
A 73	Remington			30.06
A 74	Remington		?600	30.06
A 75	Browning		BAR	270/338 and 30.06
A 76	Other	AK-47		30
A 77	Remington			30.06

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Q4. Three most commonly used rifles				
A 78	Remington		?	300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington			30.06
A 88	Remington		742, 7400	30.06, .270
A 89	Other	Heckler-Koch	HK91	308
A 90	Remington			
A 91	Remington			30.06
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98	Remington		760	.300, 30.06, 270
A 99	Browning			7 mm
A 100	Remington		742	30.06
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109	Winchester			308
A 110				
A 111				
A 112				
A 113	Remington		700	7 mm mag
A 114	Remington		742 Wingmaster	30.06
A 115				
A 116				
A 117	Remington			
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				

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Q4. Three most commonly used rifles				
A 124				
A 125				
A 126	Ruger		22	
A 127	Marlin		?	.308
A 128	Remington			7 m
A 129				
A 130				
A 131	Browning		BAR	30.06
A 132				
A 133	Ruger		Mini 14	223
A 134				
A 135	Remington			243
A 136	Other	HK 91		
A 137				
A 138	Browning			308
A 139	Remington		742	30.06 - 6 mm
A 140	Remington			30.06
A 141				
A 142	Browning			300 win mag
A 143				
A 144	Browning			7 mm mag
A 145				
A 146	Browning		BDL	300
A 147				
A 148				
A 149				
A 150	Winchester			
A 151	Remington		742	30.06
A 152	Ruger			various 270 - 338
A 153	Winchester			30
A 154	Browning		BAR	30.06
A 155				
A 156	Other	AK-47		
A 157				
A 158	Winchester			338
A 159	Remington			30.06
A 160				
A 161				
A 162	Remington		742	30.06, 270
B 1				
C 1				
C 2				
C 3	Winchester		Auto	30.06
C 4	Browning		Bar	338
C 5				
C 6				

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Q4. Three most commonly used rifles				
C 7	Remington			30.06
C 8				
C 9	Other	Uzi		9mm
C 10	Other	AK-47	Hunter	7.62x39
C 11	Other	Weatherby		300
C 12				
C 13	Winchester			.06 - 7mm
C 14	Browning			300
C 15				
C 16				
C 17				
C 18	Other	AK-47		
C 19	SigArms		550-1	
C 20	Ruger		Mini 14	.223
C 21				
C 22				
C 23	Remington		742	30.06
C 24				
C 25	Other	MAK-90		7.62-39
C 26	Other	HK	91	0.223
C 27	Remington		7400 Series	30.06
C 28	Remington		7600	30.06
C 29	Remington		742	.308 - 3.06
C 30				
C 31				
C 32	Remington			30.06 - 7mm
C 33	Browning			300 win
C 34	Browning			.270 - 30.06
C 35	Browning			300
A 1				
A 2				
A 3				
A 4	Ruger		Mini 14	223
A 5				
A 6	Other	Savage		270
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13	Browning		A-bolt	270
A 14				
A 15				
A 16				
A 17				

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Q4. Three most commonly used rifles				
A 18				
A 19				
A 20				
A 21				
A 22				
A 23				
A 24				
A 25				
A 26	Other	China	SKS	7.62x37
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36	Winchester			270 - 30.06
A 37				
A 38				
A 39				
A 40	Ruger			44 mag
A 41				
A 42				
A 43	Ruger			223 - 30.06
A 44				
A 45				
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53	Ruger		Mini-14	.223
A 54				
A 55				
A 56				
A 57	Ruger		semi-auto	35 cal
A 58				
A 59				
A 60				
A 61				
A 62	Ruger		Mini 14	223
A 63				

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Q4. Three most commonly used rifles				
A 64				
A 65				
A 66				
A 67				
A 68				
A 69				
A 70				
A 71				
A 72				
A 73				
A 74	Browning		BAR	30.06
A 75				
A 76	Remington			30.06, 270
A 77	Browning			300
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87				
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91				
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109				

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Q4. Three most commonly used rifles				
A 110				
A 111				
A 112				
A 113	Other	All		30.06
A 114	Remington		721	270
A 115				
A 116				
A 117				
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126	Browning	Remington	Shotguns	12 gauge
A 127	Remington			.308 or 30.06
A 128	Other	Savage		308
A 129				
A 130				
A 131				
A 132				
A 133	Browning		BAR	7 mm
A 134				
A 135	Browning		742	30.06
A 136	Other	AK 47		
A 137				
A 138				
A 139	Other	Weatherby		300 m
A 140				
A 141				
A 142				
A 143				
A 144				
A 145				
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150	Browning			
A 151				
A 152	Browning			various 270 - 338
A 153				
A 154	Browning		BAR	8 mm mag
A 155				

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Q4. Three most commonly used rifles				
A 156	Other	Uzi		
A 157				
A 158	Browning			300
A 159				
A 160				
A 161				
A 162				
B 1				
C 1				
C 2				
C 3	Browning		Auto	270
C 4	Browning		Bar	300
C 5				
C 6				
C 7				
C 8				
C 9	Other	HK91		
C 10	Browning		BAR	30.06
C 11				
C 12				
C 13	Browning			300
C 14				
C 15				
C 16				
C 17				
C 18				
C 19				
C 20	Other	AK47		7.62 x 39
C 21				
C 22				
C 23	Remington		742	308, 270
C 24				
C 25		M1-A1		.223
C 26				
C 27	Winchester	Various	M1 Garand	30.06
C 28				
C 29			M1A1	30.06
C 30				
C 31				
C 32				
C 33				
C 34				
C 35				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 1				
A 2	Ruger			30.06
A 3				
A 4	Other	Weatherby	Mark V	300
A 5				30.06
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Winchester			30.06, .270
A 22	Remington		700	7 mm or larger
A 23	Winchester		70	25 to 30
A 24	Remington		710	30.06
A 25		Any make	Bolt action	Does not recommend
A 26	Winchester		70	30.06 or larger
A 27	Other	Weatherby		300
A 28	Other	bolt action		270 and up
A 29				
A 30		hunter's choice		.270
A 31				
A 32				
A 33				
A 34				
A 35	Winchester		70	300 win mag
A 36				
A 37				
A 38				
A 39				
A 40	Remington			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				30.06, 300winmag, 338, 270
A 45	Browning		Bolt Action	25.06 - 328

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 46				
A 47				
A 48				
A 49	Other	Weatherby		300 mag
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Remington		Bolt Action	300 mag
A 62				
A 63	Other	bolt action repeating rifles		30.06 to .338 winmag
A 64	Winchester		70	338
A 65	Remington		bolt action	308,25-06,243,7 mm mag,30.06,22-250,300 mag all
A 66				
A 67	Ruger		#1	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70	Other		Bolt Action	30.06
A 71				300 mag
A 72	Other	Any make	Any model	7 mm, 270, 30.06, 25.06
A 73				
A 74	Browning		BAR	300 win mag
A 75				
A 76				
A 77				
A 78	Browning		Bolt action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington		700	30.06, 7 mm, 270
A 88				
A 89	Other	Russian	SKS	7.62
A 90	Other	Weatherby		7 mm mag

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 91	Remington		700	7 mag
A 92				
A 93	Winchester		70	300 mag
A 94	Other	Any bolt action		270 or larger
A 95				
A 96				
A 97	Other	Any bolt action		30 or larger, on semiauto same
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Other	Weatherby		300 magnum
A 107				
A 108				
A 109	Remington		70	7 mm
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				magnum
A 118				
A 119	Remington		700	7 mm
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				300 mag, 338 mag, 30.06
A 127				
A 128				
A 129				
A 130	Remington		700	7 mm magnum
A 131				
A 132	Other	Weatherby		300 mag
A 133				
A 134				
A 135				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 136				
A 137	Remington		700	7 mm
A 138				
A 139	Browning		BAR	7 m or 270
A 140				
A 141				
A 142				30.06
A 143				
A 144	Browning			from 7 mm mag to 338 mag for deer and elk
A 145	Winchester			30.06
A 146	Browning		BDL	7 mag
A 147	Remington		700 BDL	7 mm
A 148				
A 149				
A 150	Browning		Bolt action	
A 151				
A 152				
A 153	Remington		700	30
A 154				
A 155	Other	Weatherby		300
A 156				
A 157				
A 158				
A 159	Browning	Ruger		243, 30.06, 7 mm mag, 340 weather, .338
A 160				
A 161				
A 162				
B 1				7.62 x 39
C 1	Other	Manually operated		
C 2	Ruger		77	300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	270
C 9				
C 10	Other	HK	91	.308
C 11				
C 12				
C 13				
C 14	Other	Bolt-action w/ belted mag		Calibers, make and model mean nothing
C 15	Other	Bolt-action		30.06-7mm
C 16				
C 17	Other	Bolt-action		

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 18	Ruger		Ranch Rifle	223
C 19				.243 and larger
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		7mm mag
C 24				
C 25	Other	Savage		7mm mag
C 26				
C 27	Winchester		70	30.06
C 28				
C 29	Winchester		70	30.06 - .338
C 30				
C 31	Winchester		Manual, bolt	300
C 32	Remington		All	270 - 7mm
C 33	Winchester		70	30.06 - .300 win
C 34	Other	Bolt-action		270 or larger for elk and deer
C 35	Other	Bolt-action or semiautos		.270 or larger
A 1				
A 2	Remington			7 mm
A 3				
A 4	Winchester		70	300
A 5				
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	30.06
A 22	Winchester		70	7 mm or larger
A 23	Remington		700	25 to 30
A 24	Remington			300 Mag
A 25				
A 26	Browning		A bolt	30.06 or larger
A 27				300 win mag, 30.06 or 270

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 28				
A 29				
A 30		hunter's choice		.308
A 31				
A 32				
A 33				
A 34				
A 35	Remington		700 BDL	7 mm
A 36				
A 37				
A 38				
A 39				
A 40	Winchester			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Remington		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Savage	Bolt Action	7 mm mag
A 62				
A 63				
A 64	Remington		700	300 win mag
A 65	Other	Weatherby		
A 66				
A 67	Remington		Bolt Action	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70			Pump	30.06
A 71				7 mm mag
A 72				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 73				
A 74	Winchester		7C	300 win mag
A 75				
A 76				
A 77				
A 78	Remington		Bolt Action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Browning			308, 7 mm, 30.06
A 88				
A 89	Other	Heckler-Koch	HK-91	308
A 90				
A 91	Winchester		70	300 mag
A 92				
A 93	Browning		Mark II	300 mag, 280-270-25.06
A 94				
A 95				
A 96				
A 97	Other	Semi-auto		30 cal or larger
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Remington		700	300 win mag
A 107				
A 108				
A 109	Winchester			300 mag, 30.06
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 118				
A 119	Other	Weatherby		300
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132	Other	Weatherby		700 mag
A 133				
A 134				
A 135				
A 136				
A 137	Other	Weatherby		300
A 138				
A 139	Remington		742	30.06 or 6 mm
A 140				
A 141				
A 142				7 mm recommended for deer and elk
A 143				
A 144	Other	Weatherby		from 7 mm mag to 338 for deer
A 145	Other	Weatherby		300
A 146	Browning		BDC	300
A 147				
A 148				
A 149				
A 150	Winchester		Bolt Action	
A 151				
A 152				
A 153	Remington		700	7 mm
A 154				
A 155	Other	Weatherby		7 mm
A 156				
A 157				
A 158				
A 159	Winchester	Remington		340 Weather - .338 mag
A 160				
A 161				
A 162				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
B 1				
C 1				
C 2	Browning			300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	280
C 9				
C 10	Winchester		70	.270
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Pump		
C 18	Other	AK-47		
C 19				6mm
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		.30
C 24				
C 25	Other	Bolt-action		30.06
C 26				
C 27	Ruger		77	.300 win mag
C 28				
C 29	Remington		700	30.06-.338
C 30				
C 31	Remington		Manual bolt	300
C 32	Browning		All	.270 - 7mm
C 33	Ruger		77	30.06 - .300 win
C 34				
C 35				
A 1				
A 2	Winchester			375
A 3				
A 4	Winchester		70	270
A 5				
A 6				
A 7				
A 8				
A 9				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	.270
A 22				
A 23	Other	Any bolt action	1-5 shotmag	25 to 30
A 24	Other	Weatherby		300 mag
A 25				
A 26				
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36				
A 37				
A 38				
A 39				
A 40	Ruger			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Winchester		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Weatherby	Bolt Action	338 mag
A 62				
A 63				
A 64	Other	Weatherby Mark V		300 Wea Mag
A 65	Winchester	Browning		
A 66				
A 67	Winchester	Bolt Action		
A 68				
A 69				
A 70			Bolt Action	7 mm
A 71				
A 72				
A 73				
A 74	Browning		A Bolt	300 win mag
A 75				
A 76				
A 77				
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Other	Weatherby		300, 7 mm, 338
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91	Ruger		77	300 mag
A 92				
A 93	Ruger		M77	270, 26-06, 300 mag
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Browning		1895	45-70 govt
A 107				
A 108				
A 109				
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				
A 118				
A 119	Other	Savage		270 or 30.06
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132				
A 133				
A 134				
A 135				
A 136				
A 137				
A 138				
A 139				
A 140				
A 141				
A 142				300 winmag recommended
A 143				
A 144	Remington	Weatherby		from 270 to 338 for deer and elk

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 145	Remington			270
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150				All bolt action with a round nose point
A 151				
A 152				
A 153				
A 154				
A 155				
A 156				
A 157				
A 158				
A 159				300mag,416Rigby,375mag,270 mag,500 nitroexpress
A 160				
A 161				
A 162				
B 1				
C 1				
C 2	Other	Sako		300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8				
C 9				
C 10	Winchester		100	.308
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Weatherby		243 to 300
C 18				
C 19				
C 20				
C 21				
C 22				
C 23				
C 24				
C 25				
C 26				

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Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 27	Springfield		M Garard	30.06 - 308
C 28				
C 29	Browning		A bolt	30.06 - .338
C 30				
C 31				
C 32	Ruger		All	.270 - 7 mm
C 33	Browning		A bolt	30.06 - 300 win
C 34				
C 35				

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Hunting Guides

Q 8. Recommended rifles based on AK47 et.al.				
case	Make	Other Make	Model	Caliber
A	26	AK47		7.62x37
A	89	Other	Russian	7.62
A	113	FN-FAL		
A	159	AK47		
C	2	AK47	Antelope and Varmints and Target Shooters	30
C	10	AK47		7.62x39
C	18	AK47		
C	25	AK47		7.62
C	27	FN-FAL		308
A	26		SKS	7.62x37
A	89	HK91		308
A	113		HK 99	
C	2	AK47	Antelope and Varmints and Target Shooters	243
C	10	HK91		308
C	25		MAK 90	7.62
C	27		Century	L1A1
A	89	Other	Springfield Armory	FNG
A	113	HK93		
C	10	HK93		223
C	25		M-15	223
C	27	HK91	And clones	308

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Additional Comments by Hunting Guides

Additional comments:

- (8) The respondent answered questions 1, 2, 3, and 5 with "None of your business." He then stated in question 4: "It's none of your business what kind, make, model or how many guns law abiding citizens of the U.S. own, prefer to shoot."
- (9) The respondent wrote that he was no longer in business but that he had owned a waterfowl operation and upland bird operation (shotguns only). He added that assault rifles were not true sporting rifles and that they should be limited to use by the military and law enforcement agencies. However, he felt that true sporting weapons that can be modified into some "quasi-assault weapons" should not be restricted. He stated that he supported the effort to get military weapons off the streets but did not want the rights of true sportsmen to be affected.
- (10) Although licensed, the respondent did not guide anyone during the past year.
- (11) The respondent stated in question 6 that he recommends any legal caliber rifle that client is comfortable with and that is capable of killing the desired game.
- (12) For question 6, the respondent replied that he didn't recommend any specific make or model, other than whatever his clients are most comfortable using so long as the weapons are legal for the particular game.
- (15) The respondent stated that his organization was solely recreational wildlife watching and photography.
- (17) The respondent did not answer the questions but informed us that it is illegal in Hawaii to hunt turkey with a rifle.
- (23) The respondent stated that the study rifles were more suitable for militants than sportsmen. He added, "If they want to use these weapons let them go back to the service and use them to defend our country, not against it."
- (25) The respondent stated that, in his 35 years of conducting big game hunts, he had never seen any of the study rifles used for hunting. He suggested that the rifles are made to kill people, not big game.
- (26) The respondent recommended bolt-action rifles for his clients but stated that he doesn't demand that they use such rifles. The respondent recommended the study rifles in close-range situations in which there are multiple targets that may pose a danger to the hunter (e.g., coyotes, foxes, mountain lions, and bears).
- (27) The respondent stated that he recommended the study rifles for hunting but not any specific make.

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- (32) The respondent said that most of his clients are bow or pistol hunters. He said that there is little if any use for the study rifles in his outfitting service because it focuses on hunts of mountain lions and bighorn sheep. However, he did recommend the study rifles on target ranges and in competitive shooting situations and cited his right to bear arms.
- (35) The respondent recommended bolt-action rifles for his clients.
- (40) The respondent stated that semiautomatic rifles (such as the AK47) and others are useful for predator hunting.
- (41) The respondent said that he recommended only ranges of calibers deemed suitable but not makes and models of specific rifles.
- (44) The respondent recommended the following calibers for hunting without any specific makes or models: 30.06, 300 Win mag, 338, and 270.
- (47) The respondent stated: "You are asking questions about certain makes of assault rifles, but you are going to end up going after ALL semiautomatic guns. I've spent about 21 years HUNTING with shotguns and I've used semiautomatic models. If you go down the list of times that one new law didn't end up being a whole sloo [sic] of other laws I would be surprised. Maybe some face-to-face with these weapons would be a good thing for politicians. If they see how they are used in 'the Real World' then they may make better amendments."
- (49) The respondent specifically recommended the study rifles only for grizzly bears or moose.
- (50) The respondent stated that his business involved waterfowl hunting, which uses only shotguns.
- (51) The respondent replied: "It is my opinion this is a one sided survey, and does not tell the real meaning and purpose of the survey. And that is to ban all sporting arms in the future. The way this survey is presented is out of line."
- (53) The respondent stated: "I recommend to all my hunters that they join the NRA, vote Republican, and buy a good semi-auto for personal defense."
- (57) The respondent stated that most of his clients use bolt-action rifles. He suggested that semiautomatics are not as accurate as bolt-action rifles.
- (58) The respondent stated that the survey did not pertain to his waterfowl hunting business since only shotguns are used. He added that he did not believe semiautomatics in general present any more threat to the public than other weapons or firearms. However, he suggested that cheaply made assault-type rifles imported from China and other countries are inaccurate and not suitable for hunting.
- (59) The respondent stated that he had no knowledge of the semiautomatic rifles beyond 30.06 or similar calibers for hunting. He added that he did not have a use for "automatic" weapons.

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- (64) The respondent stated: "We need to look at weapons and determine what the designer's intent was for the weapon. We really don't need combat weapons in the hunting environment. I personally would refuse to guide for anyone carrying such a weapon."
- (65) The respondent recommended the following calibers for hunting: 7mm, 30.06, .308, .708, 25.06, .243, 22.250, and 300 mag. However, he stated that the study rifles are of no use to the sporting or hunting community whatsoever.
- (71) The respondent stated that he mainly hunts elk but did not recommend any additional information about specific firearms except for using 300 mag and 7 mm mag calibers.
- (73) The respondent recommended any bolt-action or semiautomatic in the 30 or 7mm calibers. However, he stated that he doesn't allow his clients to use any models based on assault rifles: "They are not needed for hunting. A good hunter does not have these."
- (78) The respondent recommended bolt-action rifles for hunting, particularly Browning and Remington.
- (80) Although the respondent stated that he does not conduct guides, he did not see a reason to allow any rifles other those manufactured specifically for hunting and sport shooting: "All assault rifles are for fighting war and killing humans."
- (82) The respondent stated that he used shotguns only.
- (84) The respondent said that he did not allow semiautomatic or automatic rifles in his business. He specifically recommended manually operated rifles.
- (90) The respondent stated that all the semiautomatics like AK47s are absolutely worthless and that he found no redeeming hunting value in any AK47 type of rifle. He further explained that the purpose of hunting is to use the minimum number of shells, not the maximum: "I have only known 1 [person] in 50 years to use an AK47. He shot the deer about 30 times. That wasn't hunting, it was murder." He suggested that he would be willing to testify in Congress against such weapons.
- (92) The respondent stated that he had been contacted in error, as he was not in the hunting guide business.
- (98) The respondent recommended any rifle that a client can shoot the best.
- (101) The respondent wrote a letter saying that his business was too new to provide us with useful information about client use; however, he stated that the Chinese AK47 does a proficient job on deer and similar sizes of game and may be the only rifle that some poor people could afford. He said that he is willing to testify to Congress about the outrageous price of certain weapons.
- (102) The respondent did not recommend rifles but recommended calibers .270, 30.06, .300, and 7mm.

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- (103) The respondent stated that he had clients who used semiautomatic rifles, but he didn't know which makes or models.
- (104) The respondent recommended any legal weapons capable of killing game, "including the types mentioned under the 2nd amendment."
- (105) The respondent stated that the semiautomatic rifles used by his clients were Remingtons.
- (112) The respondent stated that he could not provide any useful information because his business was too new.
- (113) The respondent recommended whatever is available to knock down an elk. He recommended specific calibers: 30.06, 300, or 338.
- (115) The respondent questioned why anyone would use a semiautomatic firearm to hunt game: "Anyone using such horrible arms should be shot with one themselves. Any big game animal does not have a chance with a rifle and now you say people can use semiautomatic rifles."
- (116) The respondent had had three clients who used semiautomatics with 30.06 and 270-caliber ammunition; however, he didn't know the makes or models.
- (118) The survey questions were not answered, but the respondent wrote: "This is a stupid survey. No one contends they hunt much for big game with an AK47. The debate is over the right to own one, which the 2nd amendment says we can."
- (119) The respondent recommended bolt-action rifles for hunting.
- (121) The respondent stated that he uses only shotguns in his operation.
- (122) The respondent recommended rifles with the calibers of .270 - 30.06 or larger to the .300 mag or .338 mag. However, he said that anything other than a standard semiautomatic sporting rifle is illegal in Colorado, where his business is conducted.
- (123) The respondent, who is a bighorn sheep outfitter, stated that the semiautomatic rifles have no place in big game hunting. He recommended basic hunting rifles with calibers of 270 or 30.06.
- (124) The respondent, who hunts mainly deer and elk, recommended calibers 270, 30.06, 300 mag, 7mm, 8mm, or 338.
- (125) The respondent said that his clients did use semiautomatics, but he didn't have any specific information about which ones.
- (126) The respondent stated that the study rifles should remain in one's home or on private property. He would like to have some for personal use but would not recommend them for hunting. He further expressed his displeasure with the Brady bill and stated that criminals need to be held accountable for their actions.
- (127) The respondent, who hunts mostly elk and deer, said that the AK47 is not powerful enough to hunt elk; however, it may be ideal for smaller game, like deer or antelope. He recommended any rifles of 30.06 caliber or larger for hunting.

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- (131) The respondent recommended bolt-action rifles for his clients with calibers .24, .25, 7 mm, or .30. He cited his preference because of fewer moving parts, their ease to fix, and their lack of sensitivity to weather conditions in the field. He added, however, that he had seen the study rifles used with good success.
- (132) The respondent stated that the study rifles are not worth anything in cold weather.
- (133) The respondent recommended handguns for hunting in calibers 41 or 44 mag.
- (136) The respondent did not recommend any rifles by make, but he did recommend a caliber of .308 or larger for elk.
- (140) The respondent recommended any good bolt or semiautomatic in 270 caliber and up. He added: "I feel the government is too involved in our lives and seek too much control over the people of our country. I am 65 yrs old and see more of our freedom lost every day. I believe in our country but I have little faith in [organizations] like the A.T.F."
- (145) The respondent stated: "Don't send these guns out west. Thanks!"
- (148) The respondent did not hunt turkey or deer and had no additional information to provide.
- (149) The respondent said that he recommends specific rifles to his clients if they ask, usually 270 to 7mm caliber big game rifles.
- (150) The respondent recommended Winchester, Remington, or any other autoloading hunting rifle.
- (152) The respondent said that he recommended caliber sizes but not specific rifles.
- (159) The respondent recommended any gun with which a client can hit a target. He stated that the AK47 could be used for hunting and target shooting.
- (174) The respondent recommended bolt-action rifles to his clients.
- (175) The respondent said that most of his deer-hunting clients use bolt-action rifles, such as Rugers and Remingtons, in calibers of 30.06, 270, or 243. In his duck guide service, only shotguns are used.
- (180) The respondent wrote: "We agree people should not be allowed to have semiautomatics and automatics. This does not mean that you silly bastards in Washington need to push complete or all gun control."
- (182) The respondent felt that the survey is biased because it didn't ask about hunting varmints. He stated that many of the study rifles are suitable for such activity.
- (184) The respondent did not recommend single shots or automatics and only allows bolt action or pumps for use by his clients.

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- (188) The respondent wrote that the study guns are good for small game hunting: "I have very good luck with them as they are small, easy to handle, fast-shooting and flat firing guns."
- (192) The respondent submitted a letter with the survey: "I do not recommend the use of semiautomatic weapons for hunting in my area. Most of these weapons are prone to be unreliable because the owner does not know how to properly care for them in adverse weather. The FN-FAL, HK91, HK93, and SIG SG550-1 are excellent and expensive weapons very much suited to competition shooting.
- "Have you surveyed the criminal element on their choice of weapons? I suspect the criminal use of the six weapons you mentioned do law-abiding citizens compare a very small percentage to the same weapon used. I realize that even one wrongful death is too many but now can you justify the over 300,000 deaths per year from government supported tobacco?
- "Gun control does not work - it never has and it never will. What we need are police that capture criminals and a court system with the fortitude to punish them for their crimes."
- (198) The respondent stated that this was his first year in and that it was mainly a bow-hunting business.

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DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HSE, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

John W. Magaw
John W. Magaw
Director

Enclosure

ATF SURVEY OF HUNTING/SHOOTING EDITORS
FOR RIFLE USAGE

Page 1 of 2

1. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

_____ Yes (*Continue*) _____ No (*Skip to #3*)

2. If your answer to item 1 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

MakeModelCaliber

3. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

_____ Yes (*Continue*) _____ No (*Skip to #5*)

_____ Yes, in certain circumstances. Please explain _____

(Continue)

4. If your answer to item 3 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles that you recommend **against** using for **hunting medium game (for example, turkey) or larger game (for example, deer)?**

MakeModelCaliber

5. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **high-power rifle competition?**

_____ Yes (*Continue*) _____ No (*Skip to #7*)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

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FOR RIFLE USAGE

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6. If your answer to item 5 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

MakeModelCaliber

7. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in **high-power rifle competition**?

____ Yes (*Continue*) ____ No (*Skip to #9*)

____ Yes, in certain circumstances. Please explain _____

(*Continue*)

8. If your answer to item 7 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles your publication recommends **against** using for **high-power rifle competition**.

MakeModelCaliber

9. Have you or any other author who contributes to your publication written any articles since 1989 concerning the use of semiautomatic rifles and their suitability for use in hunting or organized competitive shooting? (*Exclude Letters to the Editor.*)

____ Yes (*Continue*) ____ No (*You are finished with the survey. Thank you.*)

10. If your answer to item 9 is "Yes", please submit a copy of the applicable article(s). Any material you are able to provide will be very beneficial to our study. Please indicate the publication, issue date and page for each article.

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

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Editors**Comments:**

2. If your answer to item 1 is "Yes," please identify the specific centerfire rifles you recommend:
- (8) Anything except Uzis.
 - (9) All study rifles except Uzi.
 - (12) See attached articles.
3. Please explain circumstances to question 3: Does your publication recommend against the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in hunting medium game (for example, turkey) or larger game (for example, deer)?
- (12) When the caliber is inappropriate or illegal for the specific game species.
4. Other rifle make recommendations in response to question 4: If your answer to item 3 is "Yes" or "Yes, in certain circumstances," please identify the specific rifles that you recommend against using for hunting medium game (for example, turkey) or larger game (for example, deer)?
- (12) See attached articles.

The following two items are for the responses to question 6: If your answer to item 5 is "Yes," please identify the specific centerfire semiautomatic rifles you recommend:

Model

- (5) Springfield M1A and Colt AR-15.

Caliber

- (5) 7.62m (M1A) and .223 (Colt).

The following items are for questions 9 and 10 on articles written and the submission of these articles with the survey.

Article 1

- (8) No articles enclosed.
- (9) Semiautomatic Takes Tubbs to HP Title.
- (10) No articles attached.

Article 2

- (9) AR-15 Spaceguns Invading Match.

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DIRECTOR

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DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department FG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Magaw", is positioned above the typed name and title.

John W. Magaw
Director

Enclosure

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OMB No. 1512-0542

**ATF SURVEY OF STATE FISH AND GAME COMMISSIONS
FOR RIFLE USAGE**

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State: _____

1. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of high-power rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

_____ Yes (*Continue*) _____ No (*Skip to #2*)

1a. If "Yes", please cite law(s) and briefly describe the restrictions.

2. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of semiautomatic rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?

_____ Yes (*Continue*) _____ No (*Skip to #3*)

2a. If "Yes", please cite law(s) and briefly describe the restrictions.

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

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(Continue)

3. What, if any, is the minimum caliber or cartridge dimensions that may be used for **hunting medium game (for example, turkey) or larger game (for example, deer)**?

Caliber: _____ OR Dimensions: _____

_____ There is no minimum.

4. Does your commission or state collect any data on the types of rifles used in your state for **hunting medium game (for example, turkey) or larger game (for example, deer)**?

_____ Yes (Continue) _____ No (You are finished with the survey. Thank you.)

4a. If "Yes", please provide hard copies of any such available data for the past two hunting seasons of 1995 and 1996. Any data that you provide will be most beneficial to our study.

If you would like us to contact you regarding the data, please provide your name and phone number.

Name: _____ Phone: _____

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

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Survey Fish and Game Commissions for Rifle Usage

STATE	Restrictions		Minimum Caliber or Cartridge		Q5
	Q1	Q2	Q3	Q4	
	HiPwr	Semiauto	Minimum Caliber	Minimum Cartridge	Collect Data
Alabama	Yes	Yes	Any center fire rifle	None	No
Alaska	Yes	No	No Centerfire for big game		No
Arizona	No	Yes	.22 mag or larger		No
Arkansas	Yes	No	None	None	No
California	No	No	See Question 1a	See Question 1a	No
Colorado	Yes	Yes	0.24		No
Connecticut	Yes	Yes			
Delaware	Yes	Yes			
Florida	Yes	Yes	No rimfire for deer		No
Georgia	Yes	No	.22 Centerfire or larger		No
Hawaii	No	No			
Idaho	Yes	Yes	.22 rimfire		No
Illinois	Yes	Yes	None	None	No
Indiana	Yes	Yes	None		No
Iowa	Yes	Yes	not provided		No
Kansas	Yes	Yes	.23 caliber or larger		No
Kentucky	No	No			
Louisiana	Yes	No	.22 Centerfire		No
Maine	Yes	No	.22 mag or larger		No
Maryland	Yes	Yes			
Massachusetts	Yes	No	None	None	Yes
Michigan	Yes	Yes	.23 or larger		No
Minnesota	Yes	No	0.23	1.285"	No
Mississippi	Yes	No	None	None	No
Missouri	Yes	Yes	None	None	No
Montana	No	No	None		No
Nebraska	No	No			
Nevada	No	No			No
New Hampshire	Yes	Yes		above .22 rimfire	No
New Jersey	Yes	Yes	None	None	No
New Mexico	Yes	No	.24 centerfire or larger		No
New York	Yes	Yes	Must be centerfire		No
North Carolina	Yes	No	None	None	No
North Dakota	Yes	Yes	.22 Centerfire or larger		No
Ohio	Yes	No	None	None	No
Oklahoma	Yes	Yes	.22 magnum		No
Oregon	Yes	Yes	.22 or .24 or larger		No
Pennsylvania	Yes	Yes	None	None	No
Rhode Island	Yes	Yes		.229 maximum	No
South Carolina	Yes	No	Must be larger than .22		No
South Dakota	Yes	No	None	None	No
Tennessee	Yes	Yes	.24 or larger caliber		No
Texas	Yes	No	None	None	No
Utah	Yes	No		None	No
Vermont	Yes	No			No
Virginia	Yes	Yes	.23 caliber for deer		No
Washington	Yes	Yes	.240 or larger for coyote		No
West Virginia	No	No		Any centerfire	No
Wisconsin	Yes	No	.22 caliber or larger		No
Wyoming	Yes	No		23/100 bullet dia.	No

State Fish and Game Commissions

Restrictions for High Powered Rifles

1a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) No automatic weapons, no silenced weapons.

Alaska

(23) Bison hunters must use a caliber capable of firing a 200-grain bullet having 2,000 pounds of energy at 100 yards.

Arkansas

(11) No rifles for turkey.

California

(22) Centerfire for big game, 10 gauge or smaller for resident small game.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Can use any type of rifle on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) Machine guns and silencers not permitted for any hunting.

Georgia

(29) No hi-power rifles allowed for turkey hunting.

Hawaii

(49) Must have discharge of 1200 foot pounds.

Idaho

(30) No hi-power rifles allowed for hunting turkey.

Illinois

(12) Turkey or deer may not be hunted with rifle. Deer may not be hunted with muzzle loading rifle. No restriction on rifles for coyote, fox, and woodchuck, etc.

Indiana

(34) No hi-power rifles allowed for deer or turkey hunting. Limited restrictions for specified areas.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference if public or private lands. For coyote or fox, there is no restriction on rifles, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

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Louisiana

- (6) No rifles for turkey hunting. Rifles for deer hunting must be no smaller than .22 centerfire.

Maine

- (32) No hi-power rifles for turkey and water fowl. Some limited restrictions for specific areas.

Maryland

- (42) Some restrictions based on county. They are allowed in western and southern Maryland. Shotguns only in and around Baltimore and Washington, D.C.

Massachusetts

- (14) Rifles not permitted for hunting deer and turkey.

Michigan

- (27) No turkey hunting with hi-power rifle. No night hunting with hi-power rifle. Deer hunting with hi-power rifle allowed only in lower southern peninsula. Limited restrictions for specific areas.

Minnesota

- (13) Caliber must be at least .23. Ammunition must have a case length of at least 1.285". .30 caliber M1 carbine cartridge may not be used.

Mississippi

- (15) Restricts turkey hunting to shotguns. However quadriplegics may hunt turkey with a rifle.

Missouri

- (5) Rifles not permitted for turkey. Self loading firearms for deer may not have a combined magazine + chamber capacity of more than 11 cartridges.

Nebraska

- (43) Allowed and frequently used, but magazine capacity maximum is six rounds.

Nevada

- (1) Answer to #3 refers to NAS 501.150 and NAS 503.142. Not for turkey.

New Hampshire

- (7) Magazine capacity no more than 5 rounds. Prohibits full metal jacket bullets for hunting. Prohibits deer hunting with rifles in certain towns.

New Jersey

- (17) No rifles.

New Mexico

- (31) No hi-power rifles allowed for hunting turkey.

New York

- (24) No semiautomatics with a magazine capacity of greater than 6 rounds; machineguns and silencers not permitted for any hunting. Limited restrictions for specific areas.

North Carolina

- (20) Centerfire rifles not permitted for turkey hunting.

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North Dakota

(28) No hi-power rifles for turkey hunting.

Ohio

(3) Prohibits high power rifles for turkey, deer and migratory birds. High power rifles can be used on all other legal game animals.

Oklahoma

(8) Centerfire rifles only for large game. Magazines for .22 centerfire rifles may not hold more than 7 rounds.

Oregon

(2) OAR 635-65-700(1) must be .24 caliber or larger center fire rifle, no full automatic; OAR 635-65-700(2) hunters shall only use centerfire rifle .22 caliber; OAR-65-700(5) no military or full jacket bullets in original or altered form. Limited restrictions for specific areas.

Pennsylvania

(16) Rifles not permitted in Philadelphia & Pittsburgh areas.

Rhode Island

(44) .22 center fire during the summer for woodchucks.

South Carolina

(18) No rifle for turkey, rifle for deer must be larger than .22 caliber

South Dakota

(50) Magazine not more than five rounds.

Tennessee

(37) No hi-power rifles allowed for turkey hunting.

Texas

(21) Rimfire ammunition not permitted for hunting deer, antelope, and bighorn sheep; machine guns and silencers not permitted for hunting any game animals.

Utah

(9) No rifles for turkey hunting.

Vermont

(47) Turkey size less than 10 gauge. Deer/moose/deer, no restriction on caliber.

Virginia

(48) 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun.

Washington

(46) Hunting turkey limited to shotguns. Small game limited to shotguns.

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Wisconsin

(36) No .22 rimfire rifles for deer hunting.

Wyoming

(4) Big game and trophy animals, firearm must have a bore diameter of at least 23/100 of an inch.

Restrictions for Semiautomatic Rifles

2a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) Turkey may not be hunted with a centerfire rifle or rimfire rifle.
Semiautomatic rifles of proper caliber are legal for all types of hunting.
No restrictions on magazine capacity, except wildlife management areas
where centerfire rifles are restricted to 10 round max.

Arizona

(38) Magazine cannot hold more than 5 rounds.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Any type of rifle can be used on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) No semiautomatic centerfire rifles having a magazine capacity greater than 5 rounds.

Idaho

(30) No hi-power rifles (including semiautomatic) allowed for turkey hunting.

Illinois

(12) See #1.

Indiana

(34) No hi-power rifles allowed for turkey hunting.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference in public or private land. For coyote or fox, there is no restriction on rifle, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

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Maryland

(42) Some restrictions. Based on county. Shotguns only in and around Baltimore and Washington, D.C.

Michigan

(27) Unlawful to hunt with semiautomatic rifles capable of holding more than 6 rounds in magazine and barrel. Rimfire (.22 cal) rifles excluded from restrictions.

Missouri

(5) Combined magazine + chamber capacity may not be more than 11 cartridges.

New Hampshire

(7) Turkey may not be hunted with rifles. Rifles may not have magazine capacity of more than 5 cartridges.

New Jersey

(17) No rifles.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds.

North Dakota

(28) No hi-power rifles (including semiautomatics) may be used for hunting turkey.

Oklahoma

(8) See #1.

Oregon

(2) OAR 635-65-700(1) and (2) limits magazine capacity to no more than 5 cartridges.

Pennsylvania

(16) Semiautomatic rifles are not lawful for hunting in Pennsylvania.

Rhode Island

(44) Cannot use semiautomatic during the winter, only during the summer months for woodchucks (during daylight from April 1 to September 30).

Tennessee

(37) No hi-power rifles, including semiautomatics, allowed for turkey hunting.

Vermont

(47) Semiautomatic 5 rounds or less.

Virginia

(48) Semiautomatics are legal wherever rifles can be used. 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun. Striker 12 - drums holds 12 or more rounds and is illegal.

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Washington

(46) Cannot use fully automatic for hunting.

West Virginia

(45) Cannot use fully automatic firearms for hunting.

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Comments Provided by Law Enforcement Agencies

- (1) No research.
- (2) No research.
- (3) NOBLE and others forwarded information to a U.S. Senator on circumstances concerning police officers killed or injured by these weapons. No data was provided.
- (4) No research.
- (7) The organization stated: "Most of the data available on guns and crime does not provide the detail needed to identify the types of guns listed. . . . We have conducted several surveys that refer to assault rifles generically, including the Survey of Inmates in State Correctional Facilities 1991, Survey of Inmates in Local Jails 1995, and the Survey of Adults on Probation 1995. The data on assault weapons has not been analyzed in the recently released Survey of Adults on Probation 1995 or in the yet to be released Survey of Inmates in Local Jails 1995.

"Our report Guns Used in Crime includes the results of an analysis of the stolen data from the FBI's National Crime Information Center database. Our analysis was limited to general categories of guns and calibers of handguns. The recent evaluation of the assault weapons ban funded by the National Institute of Justice analyzed a more recent set of the same data with an emphasis on assault weapons. The results of this evaluation were reported in Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994."

"BJS [Bureau of Justice Statistics] supports the Firearms Research Information System (FARIS). . . . This database contains firearms-related information from surveys, research, evaluations, and statistical reports. . . . We queried this database for any research on assault weapons. The results of the query include both the reports listed above, as well as several others. Please note that in BJS's report Guns Used in Crime refers to the report Assault Weapons and Homicide in New York City prepared by one of our grantees. While the data are from 1993, the report provides interesting insights into the use of assault weapons and homicide. Another source of data on assault weapons and crime is the FBI's Law Enforcement Officers Killed and Assaulted series, which records the type of gun used in killings of police officers. Several of the reports listed in the FARIS query used these data, including Cop Killers: Assault Weapons Attacks on America's Police, and Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines."

- (9) Guns in America: National Survey on Private Ownership and Use of Firearms (May 1997) states: The 1994 NSPOF (National Survey of Private Ownership of Firearms) estimates for the total number of privately owned firearms is 192 million: 65 million handguns, 70 million rifles, 49 million shotguns, and 8 million other long guns.

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DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DEC 10 1997

O:F:S:DMS
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting.

Although ATF is not required to seek public comment on this study, the agency would appreciate any factual, relevant information concerning the sporting use suitability of the rifles in question.

Your voluntary response must be received no later than 30 days from the date of this letter; those received after that date cannot be included in the review. Please forward your responses to the Bureau of Alcohol, Tobacco and Firearms, Department TA, P.O. Box 50860, Washington, DC 20091.

Sincerely yours,

John W. Magaw
John W. Magaw
Director

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Comments Provided by Industry Members and Trade Associations

- (12) The respondent felt that definitions and usage should be subject to rulemaking. The respondent stated that limits on "sporting" use do not take into account firearms technology and its derivative uses among millions of disparate consumers. Millions of gun owners currently engage in informal target competition.

The respondent stated that the firearms are suitable for sporting purposes and that ATF's practice of making "ad hoc" revisions to import criteria disrupts legitimate commerce. The respondent recommends that all changes to criteria should be subject to rulemaking.

- (19) The respondent submitted a brochure and a statement supported by seven letters from FFL's who sell the SLR-95 and 97 and ROMAK 1 and 2. The respondent and all the supporting letters attest to the suitability of these guns for hunting because (1) they are excellent for deer or varmint hunting; (2) they are used by many for target shooting; (3) their ammunition is readily available and affordable; and (4) they are excellent for young/new hunters because of low recoil, an inexpensive purchase price, durability, and light weight, as well as being designed only for semiautomatic fire.
- (20) One respondent submitted results of its independently conducted survey, which consisted of 30 questions. The results of the survey suggest that 36 percent of those queried actually use AK47-type rifles for hunting or competition, 38 percent use L1A1-type rifles for hunting or competition, and 38 percent use G3-type rifles for hunting or competition. Other uses include home defense, noncompetitive target shooting, and plinking. Of those queried who do not currently own these types of rifles, 35 percent would use AK-type rifles for hunting or competition, 36 percent would use L1A1-type rifles for hunting or competition, and 37 percent would use G3-type rifles for hunting or competition.
- (22) The respondent claims that the majority of the study rifles' length and calibers can be used only for sporting purposes. The respondent asserts that the only technical detail remaining after the 1989 decision that is similar to a military rifle is the locking system. After 1989, the imported rifles have no physical features of military assault rifles. All have features which can be found on any semiautomatic sporting/hunting rifle.

However, the respondent writes that the Uzi-type carbines are "not suitable for any kind of sporting events other than law enforcement and military competitions because the caliber and locking system do not allow precise shooting over long distances."

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- (23) One respondent, who imports the SAR-8 and SAR-4800 that are chambered for .308 Winchester ammunition, states that neither rifle possesses any of the characteristics of either the 1989 determination or the 1994 law. The respondent states that both are permitted in match rifle and other competitions. The respondent states that only two questions should be considered to determine hunting suitability of a rifle: Whether the caliber is adequate to take one or more game species and whether the gun is safe and reliable. The respondent states that there is no factual or legal basis to conclude that the rifles are not "particularly suitable" for sporting purposes.
- (24) The respondent writes: "The particular firearms differ from other guns that are universally acceptable only in cosmetic ways. There is no functional difference between semiautomatic firearms based on the external features that have been keyed on in an attempt to implement the import restrictions of the 1994 Crime Bill. As further attempts to differentiate functionally identical firearms by these features for the purposes of culling out those that might be politically suitable for an administrative import ban is wrong."
- (25) The respondent writes that the SLG95 was developed exclusively for hunting and competitive shooting. The respondent points out that it is capable of single firing only and cannot be reassembled for use as an automatic weapon. It is made for endurance and accuracy to 300 meters.
- (26) The respondent recommends AK47 variants specifically, but believes all study rifles are suitable or adaptable for sporting. The respondent states that a Galil-chambered .308/.223 with a two-position rear sight, adjustable front sight, or scope mount channel, are reliable, durable, accurate, and suitable for hunting and organized competitive shooting. The respondent states that the Uzi, which chambers 9mm and 40 S&W, two-position rear sight, and an adjustable front sight is suitable for organized competitive target shooting.
- (27) The respondent states that the SIG-SG550-1, in its original configuration, never possessed assault rifle features. The respondent states that it was built as a semiautomatic, not a fully automatic that was converted or modified to semiautomatic. It does have protruding pistol grip, and its ergonomics are geared toward its original design of goal-precision shooting. The respondent says that the name "Sniper" was a marketing decision, and it is extremely popular in .223 competitions. Its price isolates the gun to the competitor/collector.

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- (28) Letters from H&K users were submitted in support of their continued importation and use as sporting arms. Specifically, the SR9 and PSG1 were said to be clearly suitable and utilized daily for hunting and target shooting. The respondent states that sport is defined as "an active pastime, diversion, recreation" and that the use of these is all the justification needed to allow their importation. The PSG1 has been imported since 1974, and the SR9 since 1990. The semiautomatic feature dates to turn of the century.

The respondent states that the cost would dissuade criminals from using them. The respondent refers to ATF's reports "Crime Gun Analysis (17 Communities)" and "Trace Reports 1993-1996" to show that the H&K SR9 and PSG1 are not used in crime. In the 4-year period covered by the reports, not one was traced.

- (29) The respondent faults the 1989 report both for not sufficiently addressing the issue of ready adaptability, as well as for the limited definition of sporting purposes. The respondent states that sport is defined as "that which diverts, and makes mirth; pastime, diversion." The respondent says that the NRA sponsors many matches, and personally attests to the FN-FAL and HK91 as being perfectly suitable for such matches. The respondent states that the rifles are also used for hunting deer, rabbits, and varmints. Further, the respondent remarks that the use of these rifles in crime is minuscule.

Importer/Individual Letters

On January 15, 1998, the study group received a second submission from Heckler and Koch, dated January 14, 1998. It transmitted 69 letters from individuals who appeared to be answering an advertisement placed in Shotgun News by Heckler and Koch. The study group obtained a copy of the advertisement, which requested that past and current owners of certain H&K rifles provide written accounts of how they use or used these firearms. The advertisement stated that the firearms in question, the SR9 and the PSG1, were used for sporting purposes such as hunting, target shooting, competition, collecting, and informal plinking. The advertisement also referred to the 120-day study and the temporary ban on importation, indicating that certain firearms may be banned in the future.

Synopses of Letters:

1. The writer used his SR9 to hunt deer (photo included).
2. The writer used his SR9 to hunt deer (photo included).
3. The writer used his SR9 for informal target shooting and plinking.
4. The writer used his SR9 for target practice and recreation.
5. The writer (a police officer) used SR9 to hunt. Said that it's too heavy and expensive for criminals.

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6. The writer used his SR9 for competition.
7. The writer used H&K rifles such as these around the farm to control wild dog packs.
8. The writer used his SR9 to hunt deer.
9. The writer used his SR9 to hunt, participate in target practice, and compete.
10. The writer used his H&K rifles for informal target shooting.
11. The writer used his SR9 to hunt elk because it's rugged, and to shoot targets.
12. The writer used his SR9 to target practice.
13. The writer used his HK91 to hunt varmints and compete in military rifle matches.
14. The writer does not use the firearms but is familiar with their use for target shooting, hunting, and competition.
15. The writer uses HK firearms for DCM marksmanship competition.
16. The writer used his HK93 for 100-yard club matches and NRA-high power rifle matches.
17. The writer does not own the firearms but enjoys shooting sports and collecting.
18. The writer used his HK91 to hunt deer, boar, and mountain goat and in high-power match competitions.
19. The writer used his SR9 to shoot targets and for competitions.
20. The writer used his HK91 to shoot varmints, hunt small and big game, and shoot long-range silhouettes.
21. The writer used his SR8 to hunt deer, target shoot, and plink.
22. The writer used his HK93 to shoot in club competitions.
23. The writer used his SR9 to shoot targets because the recoil does not impact his arthritis.
24. The writer (a police officer) does not own the firearm but never sees HKs used in crime.
25. The writer used his HKs for target shooting, competition, and collection.
26. The writer does not own the firearms but likes recreational target shooting.
27. Writer does not own the firearms but states, "Don't ban."

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28. The writer used his SR9 for hunting deer, varmints, and groundhogs; for target shooting; and for occasional competitions.
29. The writer used his SR9 to hunt deer because it's accurate, rugged, and reliable.
30. The writer used his SR9 to hunt deer and elk.
31. The writer used his SR9 to target shoot.
32. The writer used his SR9 to hunt deer and target shoot.
33. The writer used his HK91 to shoot military rifle 100-yard competitions.
34. The writer used his SR9 for hunting varmints and coyotes, for target shooting, and for competitions.
35. The writer used his SR9 to hunt deer and target shoot.
36. The writer (a former FBI employee) used his SR9 for hunting varmints and for precision and target shooting.
37. The writer used his HK for target shooting and competition.
38. The writer used his SR9 for informal target shooting and plinking and his HK91 for bowling pin matches, high-power rifle competitions, informal target shooting, and plinking.
39. The writer used his SR9 to plink and shoot targets, saying it's too heavy for hunting.
40. The writer has an HK91 as part of his military collection and indicates it may be used for hunting.
41. The writer used his SR9 to target shoot.
42. The writer used his SR9 to hunt deer and target shoot.
43. The writer does not own the firearms but says, "Don't ban."
44. The writer used his SR9 and HK93 for hunting deer, for target shooting, and for home defense.
45. The writer states, "Don't ban."
46. Writer states, "Don't ban."
47. Writer states, "Don't ban."
48. The writer owns an SR9; no use was reported.
49. Writer used his SR9 to compete in club matches and "backyard competitions."
50. The writer used his HK to hunt boar and antelope.

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51. The writer states, "Don't ban."
52. The writer (a police officer) does not own the firearms but states that the are not used by criminals.
53. The writer used his HK91 to hunt deer.
54. The writer (a police trainer) says that the PSG1 is used for police sniping and competitive shooting because it's accurate. He says that it's too heavy to hunt with and has attached an article on the PSG1.
55. The writer used her two PSG1s for target shooting and fun.
56. The writer used his SR9 and PSG1 to hunt and target shoot.
57. The writer used his two PSG1s to hunt and target shoot.
58. The writer provides an opinion that the SR9 is used to hunt and target shoot.
59. The writer used his PSG1 for hunting deer and informal target shooting.
60. The writer used his PSG1 to target shoot and plink.
61. The writer states, "Don't ban."
62. The writer used his HK91 to target shoot.
63. The writer used his HK91 to target shoot.
64. The writer (a U.S. deputy marshall) used his SR9 to shoot at the range.
65. The writer used his SR9 to hunt deer and coyotes.
66. The writer used his SR9 to competitively target shoot.
67. The writer used his SR9 to hunt deer and bear.
68. The writer uses military-type rifles like these for predator control on the farm.
69. The writer used his SR9 to target shoot, plink, and compete in DCM matches.

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Comments Provided by Interest Groups

- (7) Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report. March 13, 1997.
- (8) Identical comments were received from five members of the JPFO. They are against any form of gun control or restriction regardless of the type of firearm. References are made comparing gun control to Nazi Germany.
- (9) The respondent contends that police/military-style competitions, "plinking," and informal target shooting should be considered sporting. Note: The narrative was provided in addition to survey that Century Arms put on the Internet.

The respondent questions ATF's definition of "sporting" purposes. The respondent contends that neither the Bill of Rights nor the Second Amendment places restrictions on firearms based on use.

- (13) Citing the 1989 report, the respondent states that the drafters of the report determined what should be acceptable sports, thus excluding "plinking."

The respondent states that appearance (e.g., military looking) is not a factor in determining firearms' suitability for sporting purposes. It is their function or action that should determine a gun's suitability. Over 50 percent of those engaged in Practical Rifle Shooting use Kalashnikov variants. Further, citing U.S. vs. Smith (1973), the "readily adaptable" determination would fit all these firearms.

- (14) The respondent states that the vast majority of competitive marksmen shoot either domestic or foreign service rifles. Only 2-3 participants at any of 12 matches fire bolt-action match rifles. If service rifles have been modified, they are permitted under NRA rule 3.3.1.

The respondent says that attempts to ban these rifles "is a joke."

- (15) The respondent states that these firearms are used by men and women alike throughout Nebraska. All of the named firearms are used a lot all over the State for hunting. The AK47 has the same basic power of a 30/30 Winchester. All of these firearms function the same as a Browning BAR or a Remington 7400. Because of their design features, they provide excellent performance.
- (16) The respondent states that the Bill of Rights does not show the second amendment connected to "sporting purposes." The respondent says that all of the firearms in question are "service rifles," all can be used in highpower rifle competition (some better than others), but under no circumstances should "sporting use" be used as a test to determine whether they can be sold to the American public. The respondent states that "sporting use" is a totally bogus question.

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- (17) The respondent's basic concern is that the scope of our survey is significantly too narrow (i.e., not responsive to the Presidential directive, too narrow to address the problem, and inadequate to the task). The respondent states, "We do not indicate that our determination will impact modifications made to skirt law. We rely on the opinions of the 'gun press.' At a minimum, the Bureau should deny importation of: any semiautomatic capable of accepting with a capacity of more than 10 rounds, and any semiautomatic rifle with a capacity to accept more rounds than permitted by the State with the lowest number of permitted rounds. Deny any semiautomatic that incorporates cosmetically altered 'rule-beating' characteristics. Deny any semiautomatic that can be converted by using parts available domestically to any of the 1994 banned guns/characteristics. Deny any semiautomatic manufactured by any entity controlled by a foreign government. OR manufactured by a foreign entity that also manufactures, assembles or exports assault-type weapons. Deny any semiautomatic that contains a part that is a material component of any assault type weapon made, assembled, or exported by the foreign entity which is the source of the firearm proposed to be imported."

"A material component of any assault type weapon, assembled or exported by the foreign entity, which is, the source of the firearms proposed to be imported. The gun press has fabricated 'sporting' events to justify these weapons. The manner in which we are proceeding is a serious disservice to the American people."

Attachments: That Was Then. This is Now: Assault Weapons: Analysis, New Research, and Legislation; Assault Weapons and Accessories in America; and Cop Killers. All authored by the Violence Policy Center.

- (30) The respondent states, "At least for handguns, and among young adult purchasers who have a prior criminal history, the purchase of an assault-type firearm is an independent risk factor for later criminal activity on the part of the purchaser."

NOTE: The above study was for assault-type handguns used in criminal activity versus other handguns. The study involved only young adults, and caution should be used in extending these results to other adults and purchasers of rifles. However, the respondent states, it is plausible that findings for one class of firearms may pertain to another closely related class.

- (31) The 1996 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. The publication outlines 1996 expenditures for guide use and percentage of hunters using guides for both big game and small game hunting.

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- (32) In a memo from the Center to Prevent Handgun Violence the sections are Legal Background, History of Bureau Application of the "Sporting Purposes" Test, The Modified Assault Rifles under Import Suspension Should Be Permanently Barred from Importation, [The Galils and Uzis Should Be Barred from Importation Because They Are Banned by the Federal Assault Weapon Statute, and All the Modified Assault Rifles Should Be Barred from Importation Because They Fail the Sporting Purposes Test]. The conclusion states: "The modified assault rifles currently under suspended permits should be permanently barred from importation because they do not meet the sporting purposes test for importation under the Gun Control Act of 1968 and because certain of the rifles [Galils and Uzis] also are banned by the 1994 Federal assault weapon law."

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Comments Provided by Individuals

- (10) The respondent does not recommend the Uzi, but he highly recommends the others for small game and varmints. He feels that the calibers of these are not the caliber of choice for medium or large game; however, he believes that the SIG and H&K are the best-built semiautomatics available.

He can not and will not defend the Uzi, referring to it as a "piece of junk."

The respondent feels that because of their expense and their being hard to find, the study rifles (excluding the Uzi) would not be weapons of choice for illegal activities.

- (11) The respondent questions ATF's definition of "sporting" and "organized shooting." He feels that ATF's definition is too narrow and based on "political pressure."

The respondent feels that the firearms are especially suitable for competitive shooting and hunting and that the restrictions on caliber and number of cartridges should be left to the individual States. He has shot competitively for 25 years.

- (18) The respondent specifically recommends the MAK90 for hunting because its shorter length makes for easier movement through covered areas, it allows for quicker follow-up shots, its open sights allow one to come up upon a target more quickly, and it provides a quicker determination of whether a clear shot exists through the brush than with telescopic sighting.

- (21) The respondent states that the second amendment discusses "arms," not "sporting arms." The respondent further states that taxpayer money was spent on this survey and ATF has an agenda. A gun's original intent (military) has nothing to do with how it is used now. "The solution to today's crime is much the same as it always has been, proper enforcement of existing laws, not the imposition of new freedom-restricting laws on honest people."

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Information on Articles Reviewed

- (1) Describes limited availability of Uzi Model B sporter with thumbhole stock.
- (2) Describes rifle and makes political statement concerning 1989 ban.
- (3) Describes Chinese copy of Uzi with thumbhole stock.
- (4) Quality sporting firearms from Russia.
- (5) Short descriptions of rifles and shotguns available. Lead-in paragraph mentions hunting. Does not specifically recommend any of the listed weapons for hunting.
- (6) Geared to retail gun dealers, provides list of available products. States L1A1 Sporter is pinpoint accurate and powerful enough for most North American big game hunting.
- (7) Discusses the use of the rifle for hunting bear, sheep, and coyotes. Describes accuracy and ruggedness. NOTE: The rifle is a pre-1989 ban assault rifle.
- (8) Deals primarily with performance of the cartridge. Makes statement that AK 47-type rifle is adequate for deer hunting at woods ranges.
- (9) Discusses gun ownership in the United States. Highlighted text (not by writers) includes the National Survey of Private Ownership of Firearms that was conducted by Chilton Research Services of Drexel Hill, Pennsylvania during November and December 1994: 70 million rifles are privately held, including 28 million semiautomatics.
- (10) Discusses pre-1989 ban configuration. Describes use in hunting, and makes the statement that "in the appropriate calibers, the military style autoloaders can indeed make excellent rifles, and that their ugly configuration probably gives them better handling qualities than more conventional sporters as the military discovered a long time ago."
- (15) Not article - letter from Editor of Gun World magazine discussing "sport" and various competitions. Note: Attached submitted by Century Arms.
- (16) Letter addressed to "To Whom It May Concern" indicating HK91 (not mentioned but illustrated in photos) is suitable for hunting and accurate enough for competition. Note: Submitted by Century Arms.
- (17) Describes a competition developed to test a hunter's skill. Does not mention any of the rifles at issue.
- (18) Not on point - deals with AR 15.
- (19) Describes function, makes political statement.
- (20) Discusses function and disassembly of rifle.
- (21) Not on point - deals with AR 15 rifle.

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- (22) Discusses competition started to show sporting use of rifles banned for sale in California. Unknown if weapons in study were banned in California in 1990.
- (23) Not on point - deals with national matches.
- (24) Not on point - deals with various surplus military rifles.
- (25) Deals with 7.62x39mm ammunition as suitable for deer hunting and mentions the use in SKS rifles, which is a military style semiautomatic but not a part of the study.
- (26) Not on point - deals with reloading.
- (27) Not on point - deals with reloading.
- (28) Not on point - deals with AR15 rifles in competition.
- (29) Not on point - deals with the SKS rifle.
- (30) Not on point - deals with national matches.
- (31) Not on point - deals with national matches.
- (32) Not on point - deals with national matches.
- (33) Not on point - deals with national matches at Camp Perry.
- (34) Not on point - deals with national matches at Camp Perry.
- (35) Not on point - deals with 1989 national matches at Camp Perry.
- (36) Not on point - deals with Browning BAR sporting semiautomatic rifles.
- (38) Not on point - deals with AR15, mentions rifle in caliber 7.62 x 39.
- (39) Not on point - deals with bullet types.
- (40) Not on point - deals with reloading.
- (41) Discusses tracking in snow. Rifles mentioned do not include any rifles in study.
- (42) Deals with deer hunting in general.
- (43) Deals with rifles for varmint hunting. Does not mention rifles in study.
- (44) Not on point - deals with hunting pronghorn antelope.
- (45) Deals with various deer rifles.
- (46) Not on point - deals with two Browning rifles' recoil reducing system.
- (47) Not on point - deals with bolt-action rifles.
- (48) Not on point - deals with ammunition.

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- (49) Deals with modifications to AR15 trigger for target shooting.
- (50) Not on point - deals with M1 Garand as a target rifle.
- (51) Not on point - deals with reloading.
- (52) Deals with impact of banning semiautomatic rifles would have on competitors at Camp Perry.
- (53) Deals with economic impact in areas near Camp Perry if semiautomatic rifles banned. Reprint from Akron Beacon Journal.
- (54) Deals with training new competitive shooters - mentions sporting use of assault rifles, i.e., AR15.
- (55) Not on point - article about Nelson Shew.
- (56) Not on point - deals with reloading.
- (57) Not on point - deals with shooting the AR15.
- (58) Not on point - article about AR15 as target rifle.
- (59) Not on point - article about well known competitive shooter.
- (67) Not on point - deals with reloading.
- (68) Discusses semiautomatic versions of M14.
- (69) Discusses gas operation.
- (70) Discusses right adjustment on M1 and M1A rifles.
- (71) Discusses M1A and AR15-type rifles modified to remove them from assault weapon definition, and their use in competition.
- (72) Deals with AR15 type rifle.
- (73) Not on point - deals with AR15.
- (74) Not on point - deals with target rifle based on AR15/M16.
- (75) Not on point - deals with SKS rifle.
- (76) Not on point - deals with reloading 7.62x39mm cartridge.
- (77) Not on point - deals with reloading. Mentions 7.62x39mm.
- (78) Not on point - deals with ammunition performance.
- (79) Deals with .223 Remington caliber ammunition as a hunting cartridge.
- (80) Describes M1A (semiautomatic copy of M14) as a target rifle.
- (81) Not on point - deals with bullet design.
- (82) Not on point - deals with ammunition performance.

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Information on Advertisements Reviewed

- (11) Indicates rifles are rugged, reliable and accurate.
- (12) Describes rifles, lists price.
- (13) Sporting versions of AK 47 and FAL.
- (14) Sporting version of AK 47, reliable, accurate.
- (61) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (62) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (63) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (64) Catalog of ammunition - lists uses for 9mm ammunition.
- (65) Catalog of ammunition - lists uses for 9mm ammunition.
- (66) Catalog of ammunition - lists recommended uses for 9mm ammunition.

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LAWS OF NEW YORK, 2000

CHAPTER 189

AN ACT to amend the criminal procedure law, the general business law and the penal law, in relation to assault weapons and large capacity ammunition feeding devices, gun locking devices, creating a ballistic identification databank, sales of firearms, rifles or shotguns at gun shows and establishing a minimum age to possess a firearm; to amend the executive law and the state finance law, in relation to establishing a gun trafficking interdiction program and a gun tracer program; to amend the penal law, in relation to requiring the report of a stolen or lost weapon to a police agency; and to authorize a study relating to the availability and effectiveness of existing technology for use of smart guns

Became a law August 8, 2000, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (iv) of paragraph (d) of subdivision 5 of section 220.10 of the criminal procedure law, as amended by chapter 33 of the laws of 1999, is amended to read as follows:

(iv) Where the indictment charges the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02 of the penal law and the provisions of subparagraph (iii) of this paragraph do not apply, or subdivision five, seven or eight of section 265.02 of the penal law, then a plea of guilty must include at least a plea of guilty to a class E violent felony offense.

§ 2. Subparagraph (v) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 33 of the laws of 1999, is amended to read as follows:

(v) A plea of guilty, whether to the entire indictment or part of the indictment, for any crime other than a violent felony offense as defined in section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision four ~~[or]~~, five, seven or eight of section 265.02 of the penal law; provided, however, a plea of guilty, whether to the entire indictment or part of the indictment, for the class A misdemeanor of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 of the penal law may be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02 of the penal law when the defendant has not been previously convicted of a class A misde-

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

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meanor defined in the penal law in the five years preceding the commission of the offense.

§ 3. The general business law is amended by adding a new section 396-ee to read as follows:

§ 396-ee. Sale of certain weapons; locking devices therefor. (1) No person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section 265.00 of the penal law, shall sell, deliver or transfer any such rifle, shotgun or firearm to another person unless the transferee is provided at the time of sale, delivery or transfer with a gun locking device and a label containing the quoted language specified in subdivision two of this section is either affixed to such rifle, shotgun or firearm or placed in the container in which such rifle, shotgun or firearm is sold, delivered or transferred. For the purposes of this section, the term "gun locking device" shall mean an integrated design feature or an attachable accessory that is resistant to tampering and is effective in preventing the discharge of such rifle, shotgun or firearm by a person who does not have access to the key, combination or other mechanism used to disengage the device. The division of state police shall develop and promulgate rules and regulations setting forth the specific devices or the minimum standards and criteria therefor which constitute an effective gun locking device.

(2) Every person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section 265.00 of the penal law, shall, in the place where such rifles, shotguns or firearms are displayed or transferred to the purchaser, post a notice conspicuously stating in bold print that: "The use of a locking device or safety lock is only one aspect of responsible firearm storage. For increased safety firearms should be stored unloaded and locked in a location that is both separate from their ammunition and inaccessible to children and any other unauthorized person."

(3) Any person, firm or corporation who fails to comply with the provisions of this section shall be guilty of a violation punishable as provided in the penal law. Any person, firm, or corporation who fails to comply with the provisions of this section after having been previously convicted of a violation of this section shall be guilty of a class A misdemeanor, punishable as provided in the penal law.

§ 4. The general business law is amended by adding a new section 396-ff to read as follows:

§ 396-ff. Pistol and revolver ballistic identification databank. (1) For the purposes of this section, the following terms shall have the following meanings:

(a) "Manufacturer" means any person, firm or corporation possessing a valid federal license that permits such person, firm or corporation to engage in the business of manufacturing pistols or revolvers or ammunition therefor for the purpose of sale or distribution.

(b) "Shell casing" means that part of ammunition capable of being used in a pistol or revolver that contains the primer and propellant powder to discharge the bullet or projectile.

(2) On and after March first, two thousand one, any manufacturer that ships, transports or delivers a pistol or revolver to any person in this state shall, in accordance with rules and regulations promulgated by the division of state police, include in the container with such pistol or revolver a separate sealed container that encloses:

(a) a shell casing of a bullet or projectile discharged from such pistol or revolver; and

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(b) any additional information that identifies such pistol or revolver and shell casing as required by such rules and regulations.

(3) A gunsmith or dealer in firearms licensed in this state shall, within ten days of the receipt of any pistol or revolver from a manufacturer that fails to comply with the provisions of this section, either (a) return such pistol or revolver to such manufacturer, or (b) notify the division of state police of such noncompliance and thereafter obtain a substitute sealed container through participation in a program operated by the state police as provided in subdivision four of this section.

(4) The division of state police shall no later than October first, two thousand, promulgate rules and regulations for the operation of a program which provides a gunsmith or a dealer in firearms licensed in this state with a sealed container enclosing the items specified in subdivision two of this section. The program shall at a minimum:

(a) be operational by January first, two thousand one;
(b) operate in at least five regional locations within the state; and
(c) specify procedures by which such gunsmith or dealer is to deliver a pistol or revolver to the regional program location closest to his or her place of business for testing and prompt return of such pistol or revolver.

(5) On and after March first, two thousand one, a gunsmith or dealer in firearms licensed in this state shall, within ten days of delivering to any person a pistol or revolver received by such gunsmith or dealer in firearms on or after such date, forward to the division of state police, along with the original transaction report required by subdivision twelve of section 400.00 of the penal law, the sealed container enclosing the shell casing from such pistol or revolver either (a) received from the manufacturer, or (b) obtained through participation in the program operated by the division of state police in accordance with subdivision four of this section.

(6) Upon receipt of the sealed container, the division of state police shall cause to be entered in an automated electronic databank pertinent data and other ballistic information relevant to identification of the shell casing and to the pistol or revolver from which it was discharged. The automated electronic databank will be operated and maintained by the division of state police, in accordance with its rules and regulations adopted after consultation with the Federal Bureau of Investigation and the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms to ensure compatibility with national ballistic technology.

(7) Any person, firm or corporation who knowingly violates any of the provisions of this section shall be guilty of a violation, punishable as provided in the penal law. Any person, firm or corporation who knowingly violates any of the provisions of this section after having been previously convicted of a violation of this section shall be guilty of a class A misdemeanor, punishable as provided in the penal law.

§ 5. The general business law is amended by adding a new article 39-DD to read as follows:

ARTICLE 39-DD

SALE OF FIREARMS, RIFLES OR SHOTGUNS

AT GUN SHOWS

Section 895. Definitions.

896. Operation of a gun show.

897. Sale of a firearm, rifle or shotgun at a gun show.

§ 895. Definitions. For the purposes of this article:

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1. "Gun show" means an event sponsored, whether for profit or not, by an individual, national, state or local organization, association or other entity devoted to the collection, competitive use, sporting use, or any other legal use of firearms, rifles or shotguns, or an event at which (a) twenty percent or more of the total number of exhibitors are firearm exhibitors or (b) ten or more firearm exhibitors are participating or (c) a total of twenty-five or more pistols or revolvers are offered for sale or transfer or (d) a total of fifty or more firearms, rifles or shotguns are offered for sale or transfer. The term gun show shall include any building, structure or facility where firearms, rifles or shotguns are offered for sale or transfer and any grounds used in connection with the event.

2. "Firearm exhibitor" means any person, firm, partnership, corporation or company that exhibits, sells, offers for sale, transfers, or exchanges firearms, rifles or shotguns at a gun show.

3. "Gun show operator" means any person, firm, partnership, corporation or company that organizes, produces, sponsors or operates a gun show.

4. "Firearm" has the same meaning as that term is defined in 18 U.S.C. 921(a)(3), but shall not include an "antique firearm" as that term is defined in 18 U.S.C. 921(a)(16).

5. "Rifle" has the same meaning as that term is defined in 18 U.S.C. 921(a)(7).

6. "Shotgun" has the same meaning as that term is defined in 18 U.S.C. 921(a)(5).

§ 896. Operation of a gun show. 1. A gun show operator shall:

(a) at all times during such show conspicuously post and maintain signs stating "A National Instant Criminal Background Check must be completed prior to all firearm sales or transfers, including sales or transfers of rifles or shotguns". Signs must be posted at all entrances to the gun show, at all places where admission tickets to the gun show are sold and not less than four additional locations within the grounds of the gun show;

(b) notify all firearm exhibitors in writing that a national instant criminal background check must be completed prior to all firearm sales or transfers, including sales or transfers of rifles or shotguns; and

(c) provide access at the gun show to a firearm dealer licensed under federal law who is authorized to perform a national instant criminal background check where the seller or transferor of a firearm, rifle or shotgun is not authorized to conduct such a check by (i) requiring firearm exhibitors who are firearm dealers licensed under federal law and who are authorized to conduct a national instant criminal background check to provide such a check at cost or (ii) designating a specific location at the gun show where a firearm dealer licensed under federal law who is authorized to conduct a national instant criminal background check will be present to perform such a check at cost. Any firearm dealer licensed under federal law who performs a national instant criminal background check pursuant to this paragraph shall provide the seller or transferor of the firearm, rifle or shotgun with a copy of the United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms Form ATF F 4473 and such dealer shall maintain such form and make such form available for inspection by law enforcement agencies for a period of ten years thereafter.

2. Whenever the attorney general shall believe from evidence satisfactory to him or her that a gun show operator has violated any of the provisions of this section, the attorney general may bring an action or

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special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty in an amount not to exceed ten thousand dollars. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provisions of this section, no proof shall be required that any person has been injured thereby nor that the defendant intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

§ 897. Sale of a firearm, rifle or shotgun at a gun show. 1. A national instant criminal background check shall be conducted and no person shall sell or transfer a firearm, rifle or shotgun at a gun show, except in accordance with the provisions of 18 U.S.C. 922(t).

2. No person shall offer or agree to sell or transfer a firearm, rifle or shotgun to another person at a gun show and transfer or deliver such firearm, rifle or shotgun to such person or person acting on his or her behalf thereafter at a location other than the gun show for the purpose of evading or avoiding compliance with 18 U.S.C. 922(t).

3. Any person who knowingly violates any of the provisions of this section shall be guilty of a class A misdemeanor punishable as provided for in the penal law.

§ 6. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the penal law, paragraph (c) as amended by chapter 635 of the laws of 1999 and paragraph (d) as amended by chapter 378 of the laws of 1998, are amended to read as follows:

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); assault in the second degree as defined in section 120.05, stalking in the first degree, as defined in subdivision one of section 120.60, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, criminal possession of a weapon in the third degree as defined in [~~subdivisions~~ subdivision four, five [~~and~~], six, seven or eight of section 265.02, and intimidating a victim or witness in the second degree as defined in section 215.16.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in [~~subdivisions~~ subdivision four, five [~~and~~], six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law.

§ 7. Paragraph (b) and the opening paragraph of paragraph (c) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 33 of the laws of 1999, are amended to read as follows:

(b) Except as provided in subdivision six of section 60.05 and subdivision four of this section, the sentence imposed upon a person who stands convicted of a class D violent felony offense, other than the offense of criminal possession of a weapon in the third degree as defined in [~~subdivisions~~ subdivision four [~~and~~], five, seven or eight of section 265.02, must be in accordance with the applicable provisions of this chapter relating to sentencing for class D felonies provided, however, that where a sentence of imprisonment is imposed which requires a commitment to the state department of correctional services, such

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sentence shall be a determinate sentence in accordance with paragraph (c) of subdivision three of this section.

Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in ~~[subdivisions]~~ subdivision four ~~[and]~~, five, seven or eight of section 265.02 or the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in ~~[subdivisions]~~ subdivision four ~~[and]~~, five, seven or eight of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

§ 8. Subdivision 3 of section 265.00 of the penal law, as amended by chapter 264 of the laws of 1988, is amended to read as follows:

3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.

§ 9. Subdivisions 8 and 9 of section 265.00 of the penal law, subdivision 8 as amended by chapter 588 of the laws of 1972 and subdivision 9 as amended by chapter 462 of the laws of 1974, are amended to read as follows:

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm, large capacity ammunition feeding device or machine-gun.

9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any assault weapon, large capacity ammunition feeding device, pistol or revolver.

§ 10. Section 265.00 of the penal law is amended by adding three new subdivisions 21, 22 and 23 to read as follows:

21. "Semiautomatic" means any repeating rifle, shotgun or pistol, regardless of barrel or overall length, which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge or shell.

22. "Assault weapon" means (a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least two of the following characteristics:

- (i) a folding or telescoping stock;
- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
- (iii) a bayonet mount;

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(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor;

(v) a grenade launcher; or

(b) a semiautomatic shotgun that has at least two of the following characteristics:

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a fixed magazine capacity in excess of five rounds;

(iv) an ability to accept a detachable magazine; or

(c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least two of the following characteristics:

(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

(iv) a manufactured weight of fifty ounces or more when the pistol is unloaded;

(v) a semiautomatic version of an automatic rifle, shotgun or firearm; or

(d) any of the weapons, or functioning frames or receivers of such weapons, or copies or duplicates of such weapons, in any caliber, known as:

(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

(ii) Action Arms Israeli Military Industries UZI and Galil;

(iii) Beretta Ar70 (SC-70);

(iv) Colt AR-15;

(v) Fabrique National FN/FAL, FN/LAR, and FNC;

(vi) SWD M-10, M-11, M-11/9, and M-12;

(vii) Steyr AUG;

(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(e) provided, however, that such term does not include: (i) any rifle, shotgun or pistol that (A) is manually operated by bolt, pump, lever or slide action; (B) has been rendered permanently inoperable; or (C) is an antique firearm as defined in 18 U.S.C. 921(a)(16);

(ii) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;

(iii) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine;

(iv) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to section 922 of 18 U.S.C. as such weapon was manufactured on October first, nineteen hundred ninety-three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon; or

(v) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or any of the weapons defined in paragraph (d) of this subdivision lawfully possessed prior to September fourteenth, nineteen hundred ninety-four.

23. "Large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device, manufactured after September thir-

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teenth, nineteen hundred ninety-four, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

§ 11. Subdivisions 4, 5 and 6 of section 265.02 of the penal law, subdivision 4 as added by chapter 1041 of the laws of 1974, subdivision 5 as amended by chapter 175 of the laws of 1981 and subdivision 6 as added by chapter 378 of the laws of 1998, are amended and two new subdivisions 7 and 8 are added to read as follows:

(4) [He] Such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven, constitute a violation of this section if such possession takes place in such person's home or place of business~~[-]; or~~

(5) (i) [He] Such person possesses twenty or more firearms; or (ii) [he] such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business~~[-]; or~~

(6) [He] Such person knowingly possesses any disguised gun~~[-]; or~~

(7) Such person possesses an assault weapon; or

(8) Such person possesses a large capacity ammunition feeding device.

§ 12. Section 265.10 of the penal law, subdivisions 1 and 2 as amended by chapter 378 of the laws of 1998, subdivision 3 as amended by chapter 695 of the laws of 1987, subdivision 4 as amended by chapter 233 of the laws of 1980, subdivision 5 as amended by chapter 3 of the laws of 1978 and subdivision 7 as amended by chapter 1041 of the laws of 1974, is amended to read as follows:

§ 265.10 Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances.

1. Any person who manufactures or causes to be manufactured any machine-gun, assault weapon, large capacity ammunition feeding device or disguised gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot is guilty of a class A misdemeanor.

2. Any person who transports or ships any machine-gun, firearm silencer, assault weapon or large capacity ammunition feeding device or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor.

3. Any person who disposes of any machine-gun, assault weapon, large capacity ammunition feeding device or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun is guilty of a class D felony.

4. Any person who disposes of any of the weapons, instruments or appliances specified in subdivision one of section 265.01, except a

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firearm, is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.

5. Any person who disposes of any of the weapons, instruments, appliances or substances specified in section 265.05 to any other person under the age of sixteen years is guilty of a class A misdemeanor.

6. Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm is guilty of a class D felony.

7. Any person, other than a wholesale dealer, or gunsmith or dealer in firearms duly licensed pursuant to section 400.00, lawfully in possession of a firearm, who disposes of the same without first notifying in writing the licensing officer in the city of New York and counties of Nassau and Suffolk and elsewhere in the state the executive department, division of state police, Albany, is guilty of a class A misdemeanor.

§ 13. Subdivision 1 of section 265.11 of the penal law, as amended by chapter 310 of the laws of 1995, is amended to read as follows:

(1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person; or

§ 14. Subdivision 3 of section 265.15 of the penal law, as amended by chapter 219 of the laws of 1995, is amended to read as follows:

3. The presence in an automobile, other than a stolen one or a public omnibus, of any firearm, large capacity ammunition feeding device, defaced firearm, defaced rifle or shotgun, defaced large capacity ammunition feeding device, firearm silencer, explosive or incendiary bomb, bombshell, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, dirk, stiletto, billy, blackjack, metal knuckles, chuka stick, sandbag, sandclub or slungshot is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon, instrument or appliance is found, except under the following circumstances: (a) if such weapon, instrument or appliance is found upon the person of one of the occupants therein; (b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his or her trade, then such presumption shall not apply to the driver; or (c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his or her possession a valid license to have and carry concealed the same.

§ 14-a. The penal law is amended by adding a new section 265.17 to read as follows:

§ 265.17 Criminal purchase of a weapon.

A person is guilty of criminal purchase of a weapon when:

1. Knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person attempts to purchase a firearm, rifle or shotgun from another person; or

2. Knowing that it would be unlawful for another person to possess a firearm, rifle or shotgun, he or she purchases a firearm, rifle or shotgun for, on behalf of, or for the use of such other person.

Criminal purchase of a weapon is a class A misdemeanor.

§ 15. Paragraph 2 of subdivision a of section 265.20 of the penal law, as amended by chapter 328 of the laws of 1986, is amended to read as follows:

2. Possession of a machine-gun, large capacity ammunition feeding device, firearm, switchblade knife, gravity knife, pilum ballistic knife, billy or blackjack by a warden, superintendent, headkeeper or

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deputy of a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or detained as witnesses in criminal cases, in pursuit of official duty or when duly authorized by regulation or order to possess the same.

§ 15-a. Subdivision a of section 265.20 of the penal law is amended by adding a new paragraph 7-e to read as follows:

7-e. Possession and use of a pistol or revolver, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by an association or organization described in paragraph 7-a of this subdivision for the purpose of loading and firing the same by a person at least eighteen years of age but under the age of twenty-one who has not been previously convicted of a felony or serious offense, and who does not appear to be, or pose a threat to be, a danger to himself or to others; provided however, that such possession shall be of a pistol or revolver duly licensed to and shall be used under the immediate supervision, guidance and instruction of, a person specified in paragraph seven of this subdivision.

§ 16. Paragraph 8 of subdivision a of section 265.20 of the penal law, as amended by chapter 378 of the laws of 1998, is amended to read as follows:

8. The manufacturer of machine-guns, assault weapons, large capacity ammunition feeding devices, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

§ 17. Paragraphs 11 and 16 of subdivision a of section 265.20 of the penal law, paragraph 11 as added by chapter 498 of the laws of 1976 and paragraph 16 as added by chapter 378 of the laws of 1998, are amended to read as follows:

11. Possession of a [~~pistol or revolver~~] firearm or large capacity ammunition feeding device by a police officer or sworn peace officer of another state while conducting official business within the state of New York.

16. The terms "rifle," "shotgun," "pistol," "revolver," and "firearm" as used in paragraphs three, four, five, seven, seven-a, seven-b, nine, nine-a, ten, twelve, thirteen and thirteen-a of this subdivision shall not include a disguised gun or an assault weapon.

§ 18. Subdivision 1 of section 400.00 of the penal law, as amended by chapter 446 of the laws of 1997, is amended to read as follows:

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character; [~~(b)~~] (c) who has not been convicted anywhere of a felony or a serious offense; [~~(c)~~] (d) who has stated whether he or she has ever suffered any mental illness or been confined

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to any hospital or institution, public or private, for mental illness; ~~[(e)]~~ (e) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; ~~[(e)]~~ (f) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; and (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test; and ~~[(f)]~~ (g) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

§ 19. Subdivision 2 of section 400.00 of the penal law, as amended by chapter 378 of the laws of 1998, is amended to read as follows:

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

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(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

§ 20. Subdivision 8 of section 400.00 of the penal law, as amended by chapter 320 of the laws of 1992, is amended to read as follows:

8. License: exhibition and display. Every licensee while carrying a pistol or revolver shall have on his or her person a license to carry the same. Every person licensed to possess a pistol or revolver on particular premises shall have the license for the same on such premises. Upon demand, the license shall be exhibited for inspection to any peace officer, who is acting pursuant to his or her special duties, or police officer. A license as gunsmith or dealer in firearms shall be prominently displayed on the licensed premises. A gunsmith or dealer of firearms may conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, state, or local organization, or any affiliate of any such organization devoted to the collection, competitive use or other sporting use of firearms. Any sale or transfer at a gun show must also comply with the provisions of article thirty-nine-DD of the general business law. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the gunsmith or dealer of firearms and retained on the location specified on the license. Nothing in this section shall authorize any licensee to conduct business from any motorized or towed vehicle. A separate fee shall not be required of a licensee with respect to business conducted under this subdivision. Any inspection or examination of inventory or records under this section at such temporary location shall be limited to inventory consisting of, or records related to, firearms held or disposed at such temporary locations. Failure of any licensee to so exhibit or display his or her license, as the case may be, shall be presumptive evidence that he or she is not duly licensed.

§ 21. The executive law is amended by adding a new section 230 to read as follows:

§ 230. Gun trafficking interdiction program. 1. There is hereby created within the division of criminal justice services a gun trafficking interdiction program to be administered by the commissioner of the division of criminal justice services to distribute funds in accordance with the provisions of this section for the purpose of interdicting guns and components of guns illegally entering New York with a focus on those "supplier" states from which substantial numbers of guns illegally enter this state.

2. The superintendent of the division of state police, in cooperation with the United States department of treasury, bureau of alcohol, tobacco and firearms and district attorneys in New York state, shall develop and implement a strategy for the interdiction of guns illegally entering New York from supplier states. The strategy shall include identifying and prosecuting gun traffickers and suppliers of such guns who may be violating federal, state or local laws, and cooperating with the United States department of treasury, bureau of alcohol, tobacco and firearms and appropriate prosecutorial agencies and law enforcement agencies in supplier states in the investigation and enforcement of such laws. District attorneys are authorized to enter into collaborative agreements with prosecutorial and other governmental agencies and entities in

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supplier states in an effort to stop the movement of illegal guns into New York.

3. The commissioner of the division of criminal justice services shall award grant monies to district attorneys for programs which are designed to interdict the flow of illegal guns across New York state borders. In order to qualify for such grant monies, a district attorney must submit an application to the commissioner of the division of criminal justice services in accordance with guidelines prescribed by the division of criminal justice services. The application shall identify a strategy and implementation plan for preventing the entry of illegal guns across New York's borders. Funds awarded under this section shall not be used to supplant federal, state or local funds. No more than fifty percent of the funds available pursuant to this section in any one fiscal year shall be awarded for programs within a single city, county, town or village.

4. The superintendent of the division of state police shall establish and maintain within the division a criminal gun clearinghouse as a central repository of information regarding all guns seized, forfeited, found or otherwise coming into the possession of any state or local law enforcement agency which are believed to have been used in the commission of a crime. The superintendent of the division of state police shall adopt and promulgate regulations prescribing reporting procedures for such state or local law enforcement agencies, including the form for reporting such information. In addition to any other information which the superintendent of the division of state police may require, the form shall require (a) the serial number or other identifying information on the gun, if available and (b) a brief description of the circumstances under which the gun came into the possession of the law enforcement agency, including the crime which was or may have been committed with the gun.

5. In any case where a state or local law enforcement agency investigates the commission of a crime in this state and a specific gun is known to have been used in such crime, such agency shall submit a request to the national tracing center of the United States Department of Treasury, bureau of alcohol, tobacco and firearms to trace the movement of such gun and such federal agency shall be requested to provide the superintendent of the division of state police and the local law enforcement agency with the results of such a trace. This subdivision shall not apply where the source of a gun is already known to a local law enforcement agency.

§ 22. The state finance law is amended by adding a new section 97-www to read as follows:

§ 97-www. Gun trafficking interdiction fund. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the "gun trafficking interdiction fund".

2. Such fund shall consist of all moneys appropriated for the purpose of such fund, all other moneys credited or transferred to such fund pursuant to law, all moneys required by the provisions of this section or any other law to be paid into or credited to such fund, and all moneys received by the fund or donated to it.

3. Moneys of such fund shall be available for appropriation and allocation to the division of criminal justice services for the purpose of funding the gun trafficking interdiction program as set forth in section two hundred thirty of the executive law.

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4. Moneys shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of the division of criminal justice services.

§ 23. Subdivision 1 of section 400.10 of the penal law, as added by chapter 531 of the laws of 1984, is amended to read as follows:

1. (a) Any owner or other person lawfully in possession of a firearm, rifle or shotgun who suffers the loss or theft of said weapon shall within twenty-four hours of the discovery of the loss or theft report the facts and circumstances of the loss or theft to a police department or sheriff's office.

(b) Whenever a person reports the theft or loss of a firearm, rifle or shotgun to any [~~peace officer,~~] police department or sheriff's office, the officer or department receiving such report shall forward notice of such theft or loss to the division of state police via the New York [~~State Automated Criminal Justice Information System~~] Statewide Police Information Network. The notice shall contain information in compliance with the New York Statewide Police Information Network Operating Manual, including the caliber, make, model, manufacturer's name and serial number, if any, and any other distinguishing number or identification mark on the weapon.

§ 24. Section 400.10 of the penal law is amended by adding a new subdivision 3 to read as follows:

3. Notwithstanding any other provision of law, a violation of paragraph (a) of subdivision one of this section shall be punishable only by a fine not to exceed one hundred dollars.

§ 25. The legislature believes that many needless deaths caused by firearms may be prevented by the use of personalized firearms, more commonly known as "smart guns", which may only be fired by the authorized user. As an important first step in the possible use of this new type of personalized or "smart gun", the legislature is hereby directing the division of state police to conduct a comprehensive study of the feasibility of requiring the use of personalized firearms in this state.

The superintendent of the division of state police shall, in consultation with the United States Secretary of the Treasury, bureau of alcohol, tobacco and firearms, the National Law Enforcement and Correction Technology Lab located in Rome, New York, and such other private and public entities as the superintendent deems appropriate, conduct a comprehensive study of the availability and effectiveness of existing technology for the use of personalized firearms, commonly known as "smart guns" which may only be fired by the authorized user. Such study, shall include, but not be limited to, an examination of the availability and effectiveness of personalized firearms that incorporate within their design, and as part of their original manufacture, technology which limits their operational use and an examination of the availability and effectiveness of technology to transform non-personalized firearms into personalized firearms. Such technology may involve a variety of systems, such as mechanical or electronic systems, which restrict the operation of the firearm through radio frequency tagging, touch memory, remote control, fingerprint, magnetic encoding or other automated user identification systems. In addition, the superintendent shall examine and evaluate reports and studies conducted on the use of personalized firearms.

The superintendent of the division of state police shall, in collaboration with the United States Secretary of the Treasury, bureau of alcohol, tobacco and firearms, the National Law Enforcement and Correction Technology Lab located in Rome, New York, and such other

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public or private entities as the superintendent deems appropriate, formulate the necessary testing procedures for personalized firearms and test such firearms and prototypes of firearms or observe the testing of firearms and prototypes of firearms, to evaluate the effectiveness and safety of such firearms, including, but not limited to, whether such personalized firearms effectively preclude or prevent the personalized characteristics of such firearms from being deactivated.

A report, with recommendations, shall be submitted to the governor and the legislature not later than October 1, 2001. As part of such report, the superintendent of the division of state police shall make recommendations as to the feasibility or desirability of requiring the use of personalized firearm technology for all firearms manufactured, possessed, sold, offered for sale, received, transferred, shipped, transported or distributed within this state, including whether, or to what extent the use of personalized firearm technology may not be appropriate for certain categories of firearms. For purposes of this section, the terms: (a) "authorized user" means the person who lawfully owns the firearm or a person to whom the owner has given express consent to lawfully use the firearm; and (b) "firearm" means a pistol or revolver.

§ 26. Nothing in this act shall be construed to prohibit a municipality or other unit of local government from adopting or maintaining a stricter standard regulating the subject matters contained in sections three, ten or the amendments made to paragraph (a) of subdivision 1 of section 400.00 of the penal law by section eighteen of this act by local law or ordinance.

§ 27. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 28. This act shall take effect immediately; provided, however, that:

1. Sections one through three, six through nineteen and twenty-three and twenty-four of this act shall take effect on the first day of November next succeeding the date on which it shall have become a law; provided, further, however, that effective immediately the division of state police is authorized and directed to promulgate such rules and regulations as may be necessary to effectuate the provisions of sections three and four of this act; provided, further, that the amendments to subdivision 3 of section 265.00 of the penal law made by section eight of this act shall apply to offenses committed in violation of article 265 or 400 of the penal law on or after the first day of November next succeeding the date on which this act shall have become a law; and

2. The gun trafficking interdiction program and gun tracer program contained in section twenty-one of this act shall take effect November 1, 2000, provided further, however, that the superintendent of the division of state police is authorized and directed to immediately adopt, amend and promulgate such rules and regulations as may be necessary and desirable to effectuate the purposes of sections twenty-one and twenty-two of this act.

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The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

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SENATE

GOVERNOR'S PROGRAM BILL

PROGRAM BILL # 979
S. 8234

2000

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MEMORANDUM

AN ACT to amend the criminal procedure law, the general business law and the penal law, in relation to assault weapons and large capacity ammunition feeding devices, gun locking devices, creating a ballistic identification databank, sales of firearms, rifles or shotguns at gun shows and establishing a minimum age to possess a firearm; to amend the executive law and the state finance law, in relation to establishing a gun trafficking interdiction program and a gun tracer program; to amend the penal law, in relation to requiring the report of a stolen or lost weapon to a police agency; and to authorize a study relating to the availability and effectiveness of existing technology for use of smart guns

Purpose:

To establish criminal sanctions for the possession and sale of assault weapons and large capacity ammunition feeding devices; to require that a gun locking device be provided when a rifle, shotgun or firearm is sold at retail; to establish a ballistics databank; to provide for a national criminal background check whenever a rifle, shotgun or firearm is transferred at a gun show; to establish criminal sanctions for an attempt to purchase a firearm, rifle or shotgun by a person who knows that he or she is prohibited by law from possessing a firearm, rifle or shotgun; to establish criminal sanctions for a person who, knowing it would be unlawful for another person to possess a firearm, rifle or shotgun, purchases a firearm, rifle or shotgun for the use of such person; to set a minimum age of 21 for issuance of a license to possess a firearm; to establish a gun trafficking interdiction program; to require that loss or theft of a firearm, rifle or shotgun be reported to a police or sheriff's department within twenty-four hours of such loss or theft, and to authorize a study of personalized firearms or "smart guns" by the Division of State Police.

Summary of Provisions:

Sections one and two of the bill amend Criminal Procedure Law (CPL) 220.10(5)(d)(iv) and 220.30(3)(b)(v) in a similar manner by adding references to new subdivisions 7 and 8 of Penal Law §265.02 (see section 11 of the bill) to their respective provisions requiring that any plea of guilty to certain weapon charges must include at least a plea of guilty of a violent felony.

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Section three adds a new section 396-ee to the General Business Law to require any person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms to provide a gun locking device at the time of sale, delivery or transfer that is effective in preventing the weapon from being discharged. Additionally, a notice regarding the use of a locking device and the safe storage of weapons must be displayed in all businesses selling such weapons and the same notice shall either be affixed to the weapon or placed in the container in which the weapon is sold. Failure to comply with these provisions is a violation for the first offense and a class A misdemeanor for a second or subsequent offense.

Section four adds a new section 396-ff to the General Business Law to require gun manufacturers who ship pistols or revolvers into New York State to provide to dealers a shell casing for each hand gun shipped to the dealers on and after March 1, 2001. The shell casing would be encased in a sealed container and shipped with the gun to the dealer. Within ten days of delivery of a pistol or revolver by a dealer, the dealer must forward the sealed container containing the casing to the New York State Police, which would then enter the ballistics information of the casing into a ballistics databank. If a dealer receives a handgun after March 1, 2001 which does not have a shell casing in a sealed container, the bill provides for establishing a program by the State Police to obtain a shell casing fired from the pistol or revolver.

Section five adds a new Article 39-DD to the General Business Law to require the operator of a gun show to (a) conspicuously post signs stating that a National Instant Criminal Background Check must be completed prior to sale or transfer of a firearm, rifle or shotgun, (b) notify all exhibitors that such a check must be completed prior to a sale or transfer of a firearm, rifle or shotgun, (c) provide access at a gun show to a person authorized to perform a National Instant Criminal Background Check in any instance where the seller or transferor is not authorized to conduct such a check. This section also authorizes the Attorney General to bring an action or special proceeding seeking an injunction and a civil penalty not exceeding ten thousand dollars for a violation by a gun show operator. In addition, no firearm, rifle or shotgun shall be sold or transferred at a gun show without a National Instant Criminal Background Check being conducted nor shall any person offer or agree to sell a firearm, rifle or shotgun at a gun show and transfer or deliver the firearm, rifle or shotgun at a location other than the gun show for the purpose of evading or avoiding the check. A violation of this requirement shall be a class A misdemeanor punishable as provided in the Penal Law.

Sections six and seven of the bill amend Penal Law §70.02(1)(c) and (d) and §70.02(2)(b) and (c) in a similar manner by adding references to new subdivision 7 and 8 of Penal Law §265.02 to their respective provisions enumerating class D and E violent felonies and prescribing sentencing alternatives for such an offense.

Section eight of the bill amends Penal Law §265.00(3) to include the term "assault weapon" within its definition of a "firearm."

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Section nine of the bill amends subdivision 8 of section 265.00 of the Penal Law to add the term large capacity ammunition feeding device to the definition of gunsmith. Section nine also amends subdivision 9 of section 265.00 of the Penal Law to add the terms "assault weapon" and "large capacity feeding device" to the definition of dealer in firearms.

Section ten of the bill adds new subdivisions 21, 22 and 23 to Penal Law §265.00. Subdivision 21 defines "semiautomatic." Subdivision 22 defines an "assault weapon" as meaning a named list of federally barred firearms and semiautomatic rifles, shotguns or pistols that possess at least two specified characteristics, including features such as a folding or telescoping stock, a bayonet mount, a flash suppressor or a silencer. The term expressly excludes rifles and shotguns that cannot accept a detachable magazine holding more than five rounds and weapons as manufactured on October 1, 1993 which are set forth in a listing under federal law. Subdivision 23 defines the term "large capacity ammunition feeding device" to mean a magazine or similar device manufactured after September 13, 1994 which has the capacity to accept more than ten rounds of ammunition, but does not include a tubular device which only accepts .22 caliber ammunition. The definition of "assault weapon" and "large capacity ammunition feeding device" mirrors federal law and is not intended to prohibit possession of any weapon that is not prohibited under federal law.

Section eleven of the bill amends Penal Law §265.02 by effecting gender-neutral and technical corrections and by adding new subdivisions 7 and 8 to include, respectively, the possession of an assault weapon and the possession of a large capacity ammunition feeding device within its definition of the class D violent felony of criminal possession of a weapon in the third degree.

Section twelve of the bill amends Penal Law §265.10(1), (2), (3), (4), (5), (6), and (7) by adding references to an assault weapon and a large capacity ammunition feeding device to these provisions which prohibit, as a class D felony, the manufacture, transportation, disposition or defacement of certain items and the knowing purchase, receipt or disposition of certain defaced weapons.

Section thirteen amends Penal Law §265.11 (1) to include the sale, exchange, gift or disposal to another person of a large capacity ammunition feeding device within the class D felony crime of criminal sale of a firearm in the third degree.

Section fourteen of the bill amends Penal Law §265.15 (3) by adding references to an assault weapon and a large capacity ammunition feeding device to presumptions regarding the possession of certain weapons in an automobile.

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Section fourteen-a of the bill adds a new section 265.17 to the Penal Law entitled Criminal Purchase of a Weapon. Subdivision 1 of section 265.17 makes it a class A misdemeanor for a person who, knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun, attempts to purchase such a weapon. Subdivision 2 of section 265.17 makes it a class A misdemeanor for a person who, knowing it would be unlawful for another person to possess a firearm, rifle or shotgun, purchases a firearm, rifle or shotgun for use of such person.

Section fifteen of the bill amends Penal Law §265.20(a)(2) to include within the exemption from certain weapon offenses the possession of an assault weapon or a large capacity ammunition feeding device by certain correctional personnel.

Section fifteen-a of the bill adds a new subdivision (7-e) to section 265.20 of the Penal Law to authorize possession and use of a pistol or revolver at an indoor or outdoor pistol range by a person at least 18 years of age but under the age of 21 under certain circumstances.

Section sixteen of the bill amends Penal Law §265.20(a)(8) to include within the exemption from certain weapon offenses the manufacture and shipment of assault weapons or large capacity ammunition feeding devices directly to law enforcement authorities.

Section seventeen of the bill amends Penal Law section 265.20(a) 11 to authorize a police officer or sworn peace officer from another state to possess a firearm or large capacity ammunition feeding device while conducting official business within the State of New York. Section 17 also amends Penal Law section 265.20 (a)(16) to provide that the terms rifle or shotgun as used in certain paragraphs of subdivision (a) shall not include an assault weapon.

Section eighteen of the bill amends Penal Law 400.00(1) to provide that a license to carry, possess, repair or dispose of a firearm shall only be issued to a person 21 years of age or older unless such person has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force or Coast Guard or the National Guard of the State of New York.

Section nineteen of the bill amends Penal Law section 400.00(2) to provide that a license may not be obtained for an assault weapon.

Section twenty of the bill amends Penal Law 400.00(8) to include a reference to the new General Business Law Article 39-DD.

Section twenty-one adds a new section 230 to the Executive Law to establish a gun trafficking interdiction program within the Division of Criminal Justice Services to distribute funds for the purpose of interdicting guns and components of guns illegally entering New York with a focus on those states from which a substantial number of guns enter this state. Section twenty-one also authorizes the establishment of a gun tracing program within the Division of

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State Police which creates a central clearinghouse of information on guns recovered by law enforcement agencies which are believed to have been used in the commission of a crime.

Section twenty-two adds a new section 97-www to the State Finance Law to establish a "Gun Trafficking Interdiction Fund."

Sections twenty-three and twenty-four amend Penal Law section 400.10 to require that theft or loss of a firearm, rifle or shotgun be reported to a police or sheriff's department within 24 hours of discovery of the theft or loss and provides that failure to report such a loss shall be punishable by a fine not to exceed one hundred dollars.

Section twenty-five of the bill directs the Superintendent of State Police to conduct a comprehensive study of the feasibility of using personalized firearms, commonly known as "smart guns", and to submit a report with recommendations to the Governor and the Legislature not later than October 1, 2001.

Section twenty-six provides that municipalities and other units of local government are not preempted from adopting or maintaining stricter standards regulating the subject matters contained in sections 3, 10 and 18 of the bill.

Section twenty-seven of the bill sets forth a savings provision in the event that any of its terms are found to be invalid.

Section twenty-eight of the bill specifies the effective date. Bill sections 5, 20 and 25 are effective immediately. Bill sections 1, 2, 3, 6 through 19 and 21 through 24 are effective November 1. Bill section 4 requires the Division of State Police to promulgate rules and regulations for operation of the Ballistics Identification Databank by October 1, the program must be operational by January 1, 2001 and manufacturers and dealers must begin compliance on March 1, 2001.

Existing Law:

Penal Law Article 265 currently sets forth criminal penalties for the unlawful possession and sale of "firearms" which are defined to include pistols, revolvers and certain short-barrel rifles and shotguns (see Penal Law §265.00[3]). New York law, however, does not specifically address the possession and sale of military-style weapons or those with excessively large ammunition capacities. While federal law bans these items (see 18 U.S.C. §922 et. seq.), they are not specifically subject to regulation under New York statutes and their possession and sale may not be separately prosecuted in our courts.

Current law does not require the sale or use of a gun locking device, nor does current law require background checks for private sales conducted at gun shows. Current law also does not

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track ballistics data on guns. Penal Law section 400-00(1) contains no explicit minimum use for the issuance of a license to possess a pistol or revolver. Also, current law does not contain any provision for a gun trafficking interdiction program or for a comprehensive study of the feasibility of requiring the use of personalized firearms in this state. The current provisions of Penal Law section 400.10 set forth procedures to be followed whenever a person reports the theft or loss of a firearm, rifle or shotgun to a police department or sheriff's department, but there is no specific requirement that the owner of a firearm, rifle or shotgun report the theft or loss of the weapon.

Statement in Support:

Establishing an Assault Weapons Ban in New York

Since 1994, federal law has restricted the possession of assault weapons and large capacity ammunition feeding devices. The provisions contained in this measure are designed to ensure that New York State's already stringent gun laws mirror the federal provisions.

The bill's definition of an "assault weapon" and a "large capacity ammunition feeding device," as well as the exclusions and exemptions applicable to each, mirror the current provisions of federal law defining and prohibiting activities related to a "semiautomatic assault weapon" and a "large capacity ammunition feeding device" (see 18 U.S.C. §§921[a][30], [31] and 922 [v] and [w]) and the bill is not intended to prohibit possession of any weapon that is not prohibited by federal law.

With respect to penalties, this measure makes it a class D violent felony to possess either an assault weapon or a large capacity ammunition feeding device and a class D felony to unlawfully sell an assault weapon or a large capacity ammunition feeding device.

The bill thus treats the illegal possession of an unloaded assault weapon as seriously as the possession of a loaded handgun. Moreover, because this legislation adds an "assault weapon" to the definition of a "firearm," the current penalties attaching to the offense of criminal use of a firearm will also apply to the use of an assault weapon.

Under the bill, New York law enforcement officers and prosecutors will be able to pursue state charges against those who illegally possess and transfer assault weapons, thereby improving the safety of all New Yorkers.

Requiring the Sale of Gun Locks

Regrettably, children are killed or injured in our nation each year because they have gained access to a weapon. According to the Center for Disease Control (CDC), firearm injuries in 1994 nationwide were the second leading cause of death of those between the ages of 10 and 24, and there were 787 unintended firearm deaths among those 10 to 29 years of age, accounting

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for 58% of all unintentional firearm deaths in the nation that year. Also according to the CDC, more than 800 Americans young and old die each year from gun shots by children under the age of 19.

Currently, New York law is silent regarding safe and responsible ownership of guns. Recognizing that the most reliable way to safely store a weapon, and to prevent an unauthorized person or child from gaining access to it, is to unload the weapon and lock it separately from the ammunition, the bill: (1) requires that the sale of a weapon include a gun locking device; (2) mandates that notices regarding gun safety are posted in all retail establishments; and, (3) requires that such notices are either affixed to the weapon itself or are included in the container in which the weapon is sold.

Establishing a New York State Ballistics Databank

When a firearm is discharged it leaves a distinct impression on the shell casing—an impression often as unique as a fingerprint or DNA. As a result, the bill would require that at the time a weapon is sold by a dealer or gunsmith, the shell casing must be forwarded to the New York State Police, which in turn would enter the pertinent casing information into the state databank, thereby enabling law enforcement to compare databank shell casings with crime scene casings. One national survey documented that an estimated 70% of adult inmates reported obtaining their guns from sources other than the black market. In addition, an average of 274,000 guns are reported stolen to the FBI each year and 11% of guns used in crimes had the serial number removed or defaced, making it difficult for law enforcement to identify the last licensed owner. This proposal would provide invaluable assistance to law enforcement authorities in linking crimes and in tracing ownership of guns used in the commission of crimes.

Requiring all Sales at Gun Shows to be Subject to a Background Check

Under the federal Brady Law enacted in 1994, federally licensed firearms dealers are required to conduct a National Instant Criminal Background check on any prospective purchaser prior to selling a firearm. The law, however, does not apply to purchases made at gun shows from private collectors.

Last spring, Governor Pataki directed that background checks must be conducted on all firearm purchases at any gun show on state property, regardless of whether the purchase involved a licensed firearm dealer or private collector. The bill will extend this important safety requirement to all gun shows, whether conducted on or off state property.

Under the proposal the operator of the gun show will be held civilly liable (maximum fine of \$10,000) if he or she fails to do any of the following three things: (1) post signs stating that a National Instant Criminal Background Check must be performed prior to all firearm sales (2) inform all exhibitors at the show that a National Instant Criminal Background Check must be performed prior to all firearm sales and (3) provide access to a National Instant Criminal

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Background Check when the transaction involves individuals who do not have authority to perform such a check. The third requirement may be accomplished by either individual exhibitors who are authorized to perform the check or at a designated location by an authorized individual.

Additionally, the bill would punish as a misdemeanor the sale or transfer of a firearm, rifle or shotgun at a gun show, without the performance of a National Instant Criminal Background Check. It would also punish as a misdemeanor an offer or agreement to sell a firearm, rifle or shotgun at a gun show and transfer or deliver the firearm, rifle or shotgun at a location other than the gun show for the purpose of evading or avoiding the National Instant Criminal Background Check. This penalty would apply to both the buyer and the seller.

Establishing an Age Limitation for the Purchase of Handguns

New York law is currently silent regarding the legal age at which a person may be licensed to possess a hand gun. In practice, however, a licensing officer who must determine an applicant's eligibility generally will not license an individual under the age of 18. Each year since 1988 more than 80% of homicide victims ages 15 to 19 were killed with a gun, and firearms were the number two killer of men and women ages 10 to 24 in 1994 nationwide — second only to motor vehicle crashes.

Section eighteen of the bill amends Penal Law Article 400 to specifically establish that no individual under the age of 21 may be licensed to possess a hand gun.

However, where the applicant has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force or Coast Guard or the National Guard of the State of New York, the age 21 restriction shall not apply. Additionally, an individual over the age of 18 but under the age of 21 may possess a pistol or revolver at a range in a shooting competition if the requirements of Penal Law section 265.20 (7-e), which is added by section 15-a of the bill, are met.

Criminal Purchase of a Weapon

The bill adds criminal provisions for a person who attempts to purchase a firearm, rifle or shotgun when such person knows that he or she is prohibited by law from possessing such a weapon.

The bill also adds criminal provisions for a "straw purchaser", that is, a person who purchases a firearm, rifle or shotgun for use of a person who the purchaser knows is prohibited by law from possessing such a weapon.

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9-9Gun Trafficking Interdiction Program

According to 1996 figures from the Bureau of Alcohol, Tobacco and Firearms (ATF) the vast majority of guns used in crimes in New York State were originally purchased in other states. By establishing a cooperative program between the State Police, District Attorneys and ATF, a joint strategy can be developed and implemented to interdict guns illegally entering New York State in an effort to halt the movement of these guns. The bill also creates the Gun Trafficking Interdiction Fund in the State Finance Law, which could be used as a funding source for grants to District Attorneys for programs designed to interdict illegal guns coming into New York State.

Smart Gun Study

An emerging technology, personalized firearms also known as "smart guns," may only be fired by the authorized user of the weapon. The use of such weapons may be an important method of preventing accidental death and injury to individuals in households where weapons are located. In addition, since many guns that used in the commission of a crime are stolen, the use of personalized firearms could lead to a reduction in the use of stolen guns in the commission of other crimes. By conducting a comprehensive study of the availability and feasibility of personalized firearms in New York State, we hopefully are moving one step closer to preventing gun-related accidental deaths and injuries.

Budget Implications:

Additional resources may be needed at the New York State Police for implementation of the ballistics tracking system.

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**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8234

SPONSOR: PADAVAN

AN ACT to amend the criminal procedure law, the general business law and the penal law, in relation to assault weapons and large capacity ammunition feeding devices, gun locking devices, creating a ballistic identification databank, sales of firearms, rifles or shotguns at gun shows and establishing a minimum age to possess a firearm; to amend the executive law and the state finance law, in relation to establishing a gun trafficking interdiction program and a gun tracer program; to amend the penal law, in relation to requiring the report of a stolen or lost weapon to a police agency; and to authorize a study relating to the availability and effectiveness of existing technology for use of smart guns

PURPOSE:

To establish criminal sanctions for the possession and sale of assault weapons and large capacity ammunition feeding devices; to require that a gun locking device be provided when a rifle, shotgun or firearm is sold at retail; to establish a ballistics databank; to provide for a national criminal background check whenever a rifle, shotgun or firearm is transferred at a gun show; to establish criminal sanctions for an attempt to purchase a firearm, rifle or shotgun by a person who knows that he or she is prohibited by law from possessing a firearm, rifle or shotgun; to establish criminal sanctions for a person who, knowing it would be unlawful for another person to possess a firearm, rifle or shotgun, purchases a firearm, rifle or shotgun for the use of such person; to set a minimum age of 21 for issuance of a license to possess a firearm; to establish a gun trafficking interdiction program; to require that loss or theft of a firearm, rifle or shotgun be reported to a police or sheriff's department within twenty-four hours of such loss or theft, and to authorize a study of personalized firearms or "smart guns" by the Division of State Police.

SUMMARY OF PROVISIONS:

Sections one and two of the bill amend Criminal Procedure Law (CPL) 220.10(5)(d)(iv) and 220.30(3)(b)(v) in a similar manner by adding references to new subdivisions 7 and 8 of Penal Law § 265.02 (see section 11 of the bill) to their respective provisions requiring that any plea of guilty to certain weapon charges must include at least a plea of guilty of a violent felony.

Section three adds a new section 396-ee to the General Business Law to require any person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms to provide a gun locking device at the time of sale, delivery or transfer that is effective in preventing the weapon from being discharged. Additionally, a notice regarding the use of a locking device and the safe storage of weapons must be displayed in all businesses selling such weapons and the same notice shall either be affixed to the weapon or placed in the container in

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which the weapon is sold. Failure to comply with these provisions is a violation for the first offense and a class A misdemeanor for a second or subsequent offense.

Section four adds a new section 396-ff to the General Business Law to require gun manufacturers who ship pistols or revolvers into New York State to provide to dealers a shell casing for each hand gun shipped to the dealers on and after March 1, 2001. The shell casing would be encased in a sealed container and shipped with the gun to the dealer. Within ten days of delivery of a pistol or revolver by a dealer, the dealer must forward the sealed container containing the casing to the New York State Police, which would then enter the ballistics information of the casing into a ballistics databank. If a dealer receives a handgun after March 1, 2001 which does not have a shell casing in a sealed container, the bill provides for establishing a program by the State Police to obtain a shell casing fired from the pistol or revolver.

Section five adds a new Article 39-DD to the General Business Law to require the operator of a gun show to (a) conspicuously post signs stating that a National Instant Criminal Background Check must be completed prior to sale or transfer of a firearm, rifle or shotgun, (b) notify all exhibitors that such a check must be completed prior to a sale or transfer of a firearm, rifle or shotgun, (c) provide access at a gun show to a person authorized to perform a National Instant Criminal Background Check in any instance where the seller or transferor is not authorized to conduct such a check. This section also authorizes the Attorney General to bring an action or special proceeding seeking an injunction and a civil penalty not exceeding ten thousand dollars for a violation by a gun show operator. In addition, no firearm, rifle or shotgun shall be sold or transferred at a gun show without a National Instant Criminal Background Check being conducted nor shall any person offer or agree to sell a firearm, rifle or shotgun at a gun show and transfer or deliver the firearm, rifle or shotgun at a location other than the gun show for the purpose of evading or avoiding the check. A violation of this requirement shall be a class A misdemeanor punishable as provided in the Penal Law.

Sections six and seven of the bill amend Penal Law § 70.02(1)(c) and (d) and § 70.02(2)(b) and (c) in a similar manner by adding references to new subdivisions 7 and 8 of Penal Law § 265.02 to their respective provisions enumerating class D and E violent felonies and prescribing sentencing alternatives for such an offense.

Section eight of the bill amends Penal Law § 265.00(3) to include the term "assault weapon" within its definition of a "firearm."

Section nine of the bill amends subdivision 8 of section 265.00 of the Penal Law to add the term large capacity ammunition feeding device to the definition of gunsmith. Section nine also amends subdivision 9 of section 265.00 of the Penal Law to add the terms "assault weapon" and "large capacity feeding device" to the definition of dealer in firearms.

Section ten of the bill adds new subdivisions 21, 22 and 23 to Penal Law § 265.00. Subdivision 21 defines "semiautomatic." Subdivision 22 defines an "assault weapon" as meaning a named list of federally barred firearms and semiautomatic rifles, shotguns or pistols that possess at least two specified characteristics, including features such as a folding or telescoping stock, a bayonet mount, a flash suppressor or a silencer. The term expressly excludes rifles and shotguns that cannot accept a detachable magazine holding more than five rounds and weapons

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as manufactured on October 1, 1993 which are set forth in a listing under federal law. Subdivision 23 defines the term "large capacity ammunition feeding device" to mean a magazine or similar device manufactured after September 13, 1994 which has the capacity to accept more than ten rounds of ammunition, but does not include a tubular device which only accepts .22 caliber ammunition. The definition of "assault weapon" and "large capacity ammunition feeding device" mirrors federal law and is not intended to prohibit possession of any weapon that is not prohibited under federal law.

Section eleven of the bill amends Penal Law § 265.02 by effecting gender-neutral and technical corrections and by adding new subdivisions 7 and 8 to include, respectively, the possession of an assault weapon and the possession of a large capacity ammunition feeding device within its definition of the class D violent felony of criminal possession of a weapon in the third degree.

Section twelve of the bill amends Penal Law § 265.10(1), (2), (3), (4), (5), (6), and (7) by adding references to an assault weapon and a large capacity ammunition feeding device to these provisions which prohibit, as a class D felony, the manufacture, transportation, disposition or defacement of certain items and the knowing purchase, receipt or disposition of certain defaced weapons.

Section thirteen amends Penal Law § 265.11(1) to include the sale, exchange, gift or disposal to another person of a large capacity ammunition feeding device within the class D felony crime of criminal sale of a firearm in the third degree.

Section fourteen of the bill amends Penal Law § 265.15 (3) by adding references to an assault weapon and a large capacity ammunition feeding device to presumptions regarding the possession of certain weapons in an automobile.

Section fourteen-a of the bill adds a new section 265.17 to the Penal Law entitled Criminal Purchase of a Weapon. Subdivision 1 of section 265.17 makes it a class A misdemeanor for a person who, knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun, attempts to purchase such a weapon. Subdivision 2 of section 265.17 makes it a class A misdemeanor for a person who, knowing it would be unlawful for another person to possess a firearm, rifle or shotgun, purchases a firearm, rifle or shotgun for use of such a person.

Section fifteen of the bill amends Penal Law § 265.20(a)(2) to include within the exemption from certain weapon offenses the possession of an assault weapon or a large capacity ammunition feeding device by certain correctional personnel.

Section fifteen-a of the bill adds a new subdivision (7-e) to section 265.20 of the Penal Law to authorize possession and use of a pistol or revolver at an indoor or outdoor pistol range by a person at least 18 years of age but under the age of 21 under certain circumstances.

Section sixteen of the bill amends Penal Law § 265.20(a)(8) to include within the exemption from certain weapon offenses the manufacture and shipment of assault weapons or large capacity ammunition feeding devices directly to law enforcement authorities.

Section seventeen of the bill amends Penal Law section 265.20(a) 11 to authorize a police officer or sworn peace officer from another state to

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possess a firearm or large capacity ammunition feeding device while conducting official business within the State of New York. Section 17 also amends Penal Law section 265.20 (a)(16) to provide that the term

rifle or shotgun as used in certain paragraphs of subdivision (a) shall not include an assault weapon.

Section eighteen of the bill amends Penal Law Section 400.00(1) to provide that a license to carry, possess, repair or dispose of a firearm shall only be issued to a person 21 years of age or older unless such person has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force or Coast Guard or the National Guard of the State of New York.

Section nineteen of the bill amends Penal Law section 400.00(2) to provide that a license may not be obtained for an assault weapon.

Section twenty of the bill amends Penal Law Section 400.00(8) to include a reference to the new General Business Law Article 39-DD.

Section twenty-one adds a new section 230 to the Executive Law to establish a gun trafficking interdiction program within the Division of Criminal Justice Services to distribute funds for the purpose of interdicting guns and components of guns illegally entering New York with a focus on those states from which a substantial number of guns enter this state. Section twenty-one also authorizes the establishment of a gun tracing program within the Division of State Police which creates a central clearinghouse of information on guns recovered by law enforcement agencies which are believed to have been used in the commission of a crime.

Section twenty-two adds a new section 97-ww to the State Finance Law to establish a "Gun Trafficking Interdiction Fund."

Sections twenty-three and twenty-four amend Penal Law section 400.10 to require that theft or loss of a firearm, rifle or shotgun be reported to a police or sheriff's department within 24 hours of discovery of the theft or loss and provides that failure to report such a loss shall be punishable by a fine not to exceed one hundred dollars.

Section twenty-five of the bill directs the Superintendent of State Police to conduct a comprehensive study of the feasibility of using personalized firearms, commonly known as "smart guns", and to submit a report with recommendations to the Governor and the Legislature not later than October 1, 2001.

Section twenty-six provides that municipalities and other units of local government are not preempted from adopting or maintaining stricter standards regulating the subject matters contained in sections 3, 10 and 18 of the bill.

Section twenty-seven of the bill sets forth a savings provision in the event that any of its terms are found to be invalid.

Section twenty-eight of the bill specifies the effective date. Bill sections 5, 20 and 25 are effective immediately. Bill sections 1, 2, 3, 6 through 19 and 21 through 24 are effective November 1. Bill section 4 requires the Division of State Police to promulgate rules and regulations for operation of the Ballistics Identification Databank by October 1, the program must be operational by January 1, 2001 and manufac-

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turers and dealers must begin compliance on March 1, 2001.

EXISTING LAW:

Penal Law Article 265 currently sets forth criminal penalties for the unlawful possession and sale of "firearms" which are defined to include pistols, revolvers and certain short-barrel rifles and shotguns (see Penal Law § 265.00

3). New York law, however, does not specifically address the possession and sale of military-style weapons or those with excessively large ammunition capacities. While federal law bans these items (see 18 U.S.C. § 922 et. seq.), they are not specifically subject to regulation under New York statutes and their possession and sale may not be separately prosecuted in our courts.

Current law does not require the sale or use of a gun locking device, nor does current law require background checks for private sales conducted at gun shows. Current law also does not track ballistics data on guns. Penal Law section 400.00(1) contains no explicit minimum use for the issuance of a license to possess a pistol or revolver. Also, current law does not contain any provision for a gun trafficking interdiction program or for a comprehensive study of the feasibility of requiring the use of personalized firearms in this state. The current provisions of Penal Law section 400.10 set forth procedures to be followed whenever a person reports the theft or loss of a firearm, rifle or shotgun to a police department or sheriff's department, but there is no specific requirement that the owner of a firearm, rifle or shotgun report the theft or loss of the weapon.

STATEMENT IN SUPPORT:

ESTABLISHING AN ASSAULT WEAPONS BAN IN NEW YORK

Since 1994, federal law has restricted the possession of assault weapons and large capacity ammunition feeding devices. The provisions contained in this measure are designed to ensure that New York State's already stringent gun laws mirror the federal provisions.

The bill's definition of an "assault weapon" and a "large capacity ammunition feeding device," as well as the exclusions and exemptions applicable to each, mirror the current provisions of federal law defining and prohibiting activities related to a "semiautomatic assault weapon" and a "large capacity ammunition feeding device" (see 18 U.S.C. §§921

a
30,

31 and 922

v and

w) and the bill is not intended to prohibit possession of any weapon that is not prohibited by federal law.

With respect to penalties, this measure makes it a class D violent felony to possess either an assault weapon or a large capacity ammunition feeding device and a class D felony to unlawfully sell an assault weapon or a large capacity ammunition feeding device.

The bill thus treats the illegal possession of an unloaded assault weap-

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on as seriously as the possession of a loaded handgun. Moreover, because this legislation adds an "assault weapon" to the definition of a "firearm," the current penalties attaching to the offense of criminal use of a firearm will also apply to the use of an assault weapon.

Under the bill, New York law enforcement officers and prosecutors will be able to pursue state charges against those who illegally possess and transfer assault weapons, thereby improving the safety of all New Yorkers.

REQUIRING THE SALE OF GUN LOCKS

Regrettably, children are killed or injured in our nation each year because they have gained access to a weapon. According to the Center for Disease Control (CDC), firearm injuries in 1994 nationwide were the second leading cause of death of those between the ages of 10 and 24, and there were 787 unintended firearm deaths among those 10 to 29 years of age, accounting for 58% of all unintentional firearm deaths in the nation that year. Also according to the CDC, more than 800 Americans young and old die each year from gun shots by children under the age of 19.

Currently, New York law is silent regarding safe and responsible ownership of guns. Recognizing that the most reliable way to safely store a weapon, and to prevent an unauthorized person or child from gaining access to it, is to unload the weapon and lock it separately from the ammunition, the bill: (1) requires that the sale of a weapon include a gun locking device; (2) mandates that notices regarding gun safety are posted in all retail establishments; and, (3) requires that such notices are either affixed to the weapon itself or are included in the container in which the weapon is sold.

ESTABLISHING A NEW YORK STATE BALLISTICS DATABANK

When a firearm is discharged it leaves a distinct impression on the shell casing--an impression often as unique as a fingerprint or DNA. As a result, the bill would require that at the time a weapon is sold by a dealer or gunsmith, the shell casing must be forwarded to the New York State Police, which in turn would enter the pertinent casing information into the state databank, thereby enabling law enforcement to compare databank shell casings with crime scene casings. One national survey documented that an estimated 70% of adult inmates reported obtaining their guns from sources other than the black market. In addition, an average of 274,000 guns are reported stolen to the FBI each year and 11% of guns used in crimes had the serial number removed or defaced, making it difficult for law enforcement to identify the last licensed owner. This proposal would provide invaluable assistance to law enforcement authorities in linking crimes and in tracing ownership of guns used in the commission of crimes.

REQUIRING ALL SALES AT GUN SHOWS TO BE SUBJECT TO A BACKGROUND CHECK

Under the federal Brady Law enacted in 1994, federally licensed firearms dealers are required to conduct a National Instant Criminal Background Check on any prospective purchaser prior to selling a firearm. The law, however, does not apply to purchases made at gun shows from private collectors.

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Last spring, Governor Pataki directed that background checks must be conducted on all firearm purchases at any gun show on state property, regardless of whether the purchase involved a licensed firearm dealer or private collector. The bill will extend this important safety requirement to all gun shows, whether conducted on or off state property.

Under the proposal the operator of the gun show will be held civilly liable (maximum fine of \$10,000) if he or she fails to do any of the following three things: (1) post signs stating that a National Instant Criminal Background Check must be performed prior to all firearm sales (2) inform all exhibitors at the show that a National Instant Criminal Background Check must be performed prior to all firearm sales and (3) provide access to a National Instant Criminal Background Check when the transaction involves individuals who do not have authority to perform such a check. The third requirement may be accomplished by either individual exhibitors who are authorized to perform the check or at a designated location by an authorized individual.

Additionally, the bill would punish as a misdemeanor the sale or transfer of a firearm, rifle or shotgun at a gun show, without the performance of a National Instant Criminal Background Check. It would also punish as a misdemeanor an offer or agreement to sell a firearm, rifle or shotgun at a gun show and transfer or deliver the firearm, rifle or shotgun at a location other than the gun show for the purpose of evading or avoiding the National Instant Criminal Background Check. This penalty would apply to both the buyer and the seller.

ESTABLISHING AN AGE LIMITATION FOR THE PURCHASE OF HANDGUNS

New York law is currently silent regarding the legal age at which a person may be licensed to possess a hand gun. In practice, however, a licensing officer who must determine an applicant's eligibility generally will not license an individual under the age of 18. Each year since 1988 more than 80% of homicide victims ages 15 to 19 were killed with a gun, and firearms were the number two killer of men and women ages 10 to 24 in 1994 nationwide -- second only to motor vehicle crashes.

Section eighteen of the bill amends Penal Law Article 400 to specifically establish that no individual under the age of 21 may be licensed to possess a hand gun.

However, where the applicant has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force or Coast Guard or the National Guard of the State of New York, the age 21 restriction shall not apply. Additionally, an individual over the age of 18 but under the age of 21 may possess a pistol or revolver at a range in a shooting competition if the requirements of Penal Law section 265.20 (7-e), which is added by section 15-a of the bill are met.

CRIMINAL PURCHASE OF A WEAPON

The bill adds criminal provisions for a person who attempts to purchase a firearm, rifle or shotgun when such person knows that he or she is prohibited by law from possessing such a weapon.

The bill also adds criminal provisions for a "straw purchaser", that is, a person who purchases a firearm, rifle or shotgun for use of a person who the purchaser knows is prohibited by law from possessing such a

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weapon.

GUN TRAFFICKING INTERDICTION PROGRAM

According to 1996 figures from the Bureau of Alcohol, Tobacco and Fire-anna (ATF) the vast majority of guns used in crimes in New York State were originally purchased in other states. By establishing a cooperative program between the State Police, District Attorneys and ATF, a joint strategy can be developed and implemented to interdict guns illegally entering New York State in an effort to halt the movement of these guns. The bill also creates the Gun Trafficking Interdiction Fund in the State Finance Law, which could be used as a funding source for grants to District Attorneys for programs designed to interdict illegal guns coming into New York State.

SMART GUN STUDY

An emerging technology, personalized firearms also known as "smart guns," may only be fired by the authorized user of the weapon. The use of such weapons may be an important method of preventing accidental death and injury to individuals in households where weapons are located. In addition, since many guns that are used in the commission of a crime are stolen, the use of personalized firearms could lead to a reduction in the use of stolen guns in the commission of other crimes. By conducting a comprehensive study of the availability and feasibility of personalized fireanns in New York State, we hopefully are moving one step closer to preventing gun-related accidental deaths and injuries.

BUDGET IMPLICATIONS:

Additional resources may be needed at the New York State Police for implementation of the ballistics tracking system.

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MS. MATUSOW: Okay.

MR. SEAMAN: Mr. Koon or someone else --

MS. MATUSOW: On what -- which --

MR. SEAMAN: Well, let's start with the -- I think you were in the area of penalties, and let me follow up on what I believe it was what Mr. Tedisco said earlier. He stated that there wasn't anything in this bill to enhance penalties. Is that basically correct?

MS. MATUSOW: The penalties --

MR. SEAMAN: There aren't any enhanced penalties provisions in the bill?

MS. MATUSOW: Aside from creating the crime of the criminal purchase of a weapon, the assault weapon portion of this bill is identical to the federal law. That's what the Governor's Program wanted to use and includes using the current criminal use penalties that are now in New York law. That includes consecutive sentences for the use of a firearm and the commission of a crime. The previous version of the assault weapon and ban legislation that I carried had a much greater level of penalties for consecutive

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sentencing, but the language in the Governor's bill was what we had to go with.

MR. SEAMAN: All right, thank you.

MS. MATUSOW: Regrettably.

MR. SEAMAN: Would the sponsor continue to yield?

ACTING SPEAKER CONNELLY: Ms. Matusow, do you continue to yield?

MS. MATUSOW: Yes.

MR. SEAMAN: All right. In the area of assault weapons, I wondered if you could just clear this up for me. As I understand it --

MS. MATUSOW: I'm sorry, Madam Speaker, I'm -- could you speak a little louder, it's hard to hear you.

MR. SEAMAN: Okay. In the area of assault weapons, or the so-called assault weapons, are they defined exactly or is the definition somewhat different from the federal definition of assault weapons?

MS. MATUSOW: The legislation is identical with

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the federal legislation.

MR. SEAMAN: No variation whatsoever?

MS. MATUSOW: No.

MR. SEAMAN: And based on the definition in this bill, it includes certain guns which are currently used by sportsmen, to your knowledge, is that correct?

MS. MATUSOW: If it's illegal under federal legislation, then it's going to be illegal under New York State law and vice versa.

MR. SEAMAN: Well, would it be fair to say, if you would continue to yield, that if a person who uses a gun for target practice or some sports-related field of activity, has a gun which is a semi-automatic rifle or shotgun capable of accepting a detached magazine with a certain prescribed number of bullets, that that weapon would be classified as an assault weapon, would that be correct?

MS. MATUSOW: If it's legal under federal law, it's legal under State law. If it was a weapon that was owned prior to October 1994, it's grandfathered and it's grandfathered in State

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law. I don't know how else to say it. It's exactly the same. If it's illegal to have it under federal law, it is illegal under this law, under this bill, to have the weapon.

MR. SEAMAN: All right. Let's go into -- let me ask about that, if you would continue to yield. The grandfather clause relates to the year 1994, is that correct?

MS. MATUSOW: October 1994.

MR. SEAMAN: October 1994. And it had to be owned by -- does that require continuous ownership by the same person since that period of time?

MS. MATUSOW: If it was in lawful possession as of October 1994, it's grandfathered.

MR. SEAMAN: All right. Then it could be transferred to somebody else?

MS. MATUSOW: Yes.

MR. SEAMAN: What about the large number of guns which have been purchased by lawful gun owners since October 1994? Are they grandfathered or are they not grandfathered?

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MS. MATUSOW: No, same as federal law.

MR. SEAMAN: Why not? Why wouldn't you include a grandfather provision to comport to jibe with the effective date of this bill?

MS. MATUSOW: Mr. Seaman, my colleague, those weapons are illegal under federal law. You can't legalize them under State law and the Governor's Program Bill insisted -- the language insisted on tracking the federal legislation exactly. So, this legislation in New York is simply reproducing the language that's federal law into State law so someone who violates that law can be prosecuted in State court.

MR. SEAMAN: All right. I guess, as you can tell from my questioning, there is a difference of opinion based upon what I hear from some of my constituents as to what they deem be legal that they purchased between 1994 and now. They are very worried about this grandfather clause and the applicability and the applicable date. Let me move to another area. Would you continue to yield with respect to the question of the sunset provision in this bill? Is there a sunset provision?

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MS. MATUSOW: Just a moment. After consultation with counsel --

MR. SEAMAN: I'm sorry?

MS. MATUSOW: After consultation with counsel, we believe that it does not sunset.

MR. SEAMAN: All right. Are you aware of the fact that the federal law has a sunset provision in the year 2004?

MS. MATUSOW: Yes, I am and, therefore, it makes this bill tougher.

MR. SEAMAN: I'm sorry?

MS. MATUSOW: I said it does. If this bill is stronger than that because there is no sunset.

MR. SEAMAN: I wonder if I could address another area of the bill that relates to local option. Would you comment on that portion of the bill?

MS. MATUSOW: Local option?

MR. SEAMAN: Yes. I believe on page 15, Section 26 there is some reference to the right of municipalities, local governments to --I'm sorry. Do you want me to start over

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1 calendar, starting with Calendar Number 1712.

2 ACTING PRESIDENT MEIER: The
3 Secretary will read the controversial
4 calendar, beginning with Calendar 1712.

5 THE SECRETARY: Calendar Number
6 1712, by Senator Padavan, Senate Print 8234,
7 an act to amend the Criminal Procedure Law and
8 others, in relation to assault weapons.

9 SENATOR PADAVAN: Thank you, Mr.
10 President.

11 This is a very comprehensive bill
12 that has a number of key elements in it --
13 provisions, requirements dealing with weapons,
14 their use and those that are precluded from
15 use. I'll go through the major parts of the
16 bill as quickly as I can.

17 ACTING PRESIDENT MEIER: Can we
18 have some order in the chamber.

19 SENATOR PADAVAN: The first
20 section of the bill deals with gun locks. It
21 requires that weapons, pistols and revolvers,
22 that are sold through retailers and other
23 means shall be delivered with gun locks,
24 devices that are prescribed by the State
25 Police as those that meet the requirements to

1 ensure that children and others who get their
2 hands on these weapons and use them, as we
3 have seen a number of instances happen in this
4 state tragically, will not occur, at least to
5 the extent possible.

6 So that whole section beginning on
7 page 2 of the bill, going on to page 3, deals
8 with all of the requirements of safety devices
9 or gun locks.

10 Further on on page 3 we deal with
11 the issue of a ballistics directory, which
12 involves the shell casing. Any expended round
13 of ammunition, the casing thereof has unique
14 characteristics, similar to what a DNA would
15 be in a human being. The bill requires that
16 those characteristics be cataloged, maintained
17 by the State Division of Police, with certain
18 time frames in terms of when that will happen
19 and when the standards of the state division
20 will be developed.

21 And with that information in hand,
22 should that weapon be used in the commission
23 of a crime, there is a good chance that it can
24 be traced back to the seller and the owner.

25 The third provision of the bill

1 deals with gun shows. What it says
2 specifically is that a national instant
3 criminal background check shall be conducted
4 on all individuals who acquire a weapon at a
5 show, either sold, transferred, bartered, or
6 in any other way. And it goes into some
7 detail as to how that should be done and what
8 the penalties are for not doing it.

9 The fourth section of the bill
10 deals with the issue of assault weapons.
11 Fundamentally, we track the federal
12 requirements in a variety of ways, by
13 definition of what a semiautomatic is and by
14 definition of what an assault weapon is.

15 And despite what some may have
16 heard, a straight semiautomatic weapon is not
17 banned either at the federal level, nor is it
18 in this bill.

19 However, a semiautomatic weapon
20 that has at least two of the characteristics
21 that are outlined in this measure -- and they
22 are listed here, and you can read them on page
23 7, such as a folding or telescoping stock, a
24 fixed magazine capacity in excess of -- so on
25 and so on, right down the line, including

1 those that can launch grenades or have
2 silencer attachments or flash suppressors --
3 all of those requirements which are
4 articulated in the federal law are transposed
5 into the state law.

6 By so doing, we enable our
7 prosecutors and law enforcement agencies to
8 enforce the law rather than having to transfer
9 it to a federal jurisdiction.

10 And of course there are a number of
11 penalties that are outlined for violating
12 these laws. In addition to the descriptions,
13 also listed -- and again, I repeat, as in the
14 federal law -- are specific weapons. And
15 you'll note they are military weapons
16 manufactured and used in various countries,
17 including our own, for military purposes and
18 generally categorized as assault weapons.

19 There are certain exclusions, such
20 as bolt-action rifles, antique weapons, those
21 that have been rendered inoperable, and so on.

22 The next section of the bill deals
23 with the age. We raise the age to 21 from 18.
24 The only exceptions to that would be an
25 honorably discharged member of the military

1 and a person 18 years of age or older who is
2 participating in a sanctioned target
3 competition. Other than that, the
4 requirements for possession of a pistol or
5 revolver would be 21 years of age.

6 Those are the major parts of the
7 bill. But one of the other areas that begins
8 on page 13 deals with the broad issue of gun
9 trafficking. As we have learned quite, I
10 think, dramatically, that most of the weapons
11 that are used in crimes in this state and
12 certainly in New York City are brought in from
13 other states, and there is a major enterprise.
14 And that problem has to be addressed, and it
15 is addressed in this bill in a variety of
16 ways.

17 There is a proposal that we have a
18 gun trafficking interdiction program operated
19 under the auspices of the Division of Criminal
20 Justice. Funds will be distributed in
21 accordance with those amounts appropriated,
22 put in a special fund under the auspices of
23 the Comptroller. District attorneys will
24 receive grants to deal with this issue.

25 The Superintendent of the Division

1 of State Police shall establish and maintain
2 within the division a criminal gun
3 clearinghouse as a central repository of
4 information -- again, to further identify
5 where these guns are coming from, what they
6 are and in sum, perhaps, until such time as
7 the federal government does something more
8 meaningful, put a damper on those weapons that
9 are being imported into New York State and
10 used in the commission of a crime.

11 One final item is the reporting of
12 a stolen weapon, which is now mandated within
13 24 hours. And if that person does not do so,
14 they'll be subject to a \$100 fine.

15 Those are the essential ingredients
16 within this what I would term comprehensive
17 approach to dealing with gun violence in New
18 York State.

19 ACTING PRESIDENT MEIER: Senator
20 Gentile.

21 SENATOR GENTILE: On the bill,
22 Mr. President.

23 ACTING PRESIDENT MEIER: Senator
24 Gentile, on the bill.

25 SENATOR GENTILE: Mr. President,

1 I am very pleased to see included in this bill
2 here tonight the gun trafficking and
3 interdiction program. It's a program -- it
4 was an idea that I introduced in this house
5 earlier this year by way of legislation.
6 Indeed, many of the arguments that I made in
7 this house on a motion to discharge on the
8 merits of this program were made by my good
9 colleague Senator Padavan just moments ago.

10 This program of gun trafficking
11 interdiction is essential, is an essential way
12 to track the illegal point of movement of a
13 gun. Such a program of gun trafficking
14 interdiction was used in the Columbine
15 massacre in Colorado. And because of the gun
16 trafficking interdiction program there, they
17 quickly found the point at which those guns
18 entered the illegal market.

19 As Senator Padavan has said, there
20 are many guns in New York State that come from
21 out of state. Having a program of this type
22 will allow us to track the movement of these
23 guns to find that choke point of where the
24 legal gun enters the illegal market.

25 So this program is a good program,

1 it is a great program. It is proven in other
2 states. We need it here. Senator Padavan is
3 to be congratulated for putting it in. I am
4 glad that those ideas that I introduced
5 earlier this year have percolated down into
6 this bill tonight. So I'm pleased to be able
7 to -- or percolated up, I should say, maybe.
8 Okay.

9 But I'm pleased to support it. And
10 certainly I think this is a good day that both
11 sides of the house now can agree that this is
12 a good program.

13 So, Mr. President, I will be voting
14 in favor.

15 ACTING PRESIDENT MEIER: Senator
16 Schneiderman.

17 SENATOR SCHNEIDERMAN: Mr.
18 President, on the bill.

19 It's wonderful that we're finally
20 getting a first step in this house towards
21 doing something about what I regard and many
22 of us regard as a crisis of guns in America
23 and guns in New York.

24 The program that Senator Gentile
25 has been pushing -- and I know Speaker Silver,

1 in the other house -- is a fine program. I
2 think the Governor's ballistics fingerprinting
3 proposal -- I have to give him credit for
4 that -- is good.

5 I am disappointed that this bill
6 doesn't do more. And I'm also disappointed
7 that it's taken us so long to do something
8 that I think the overwhelming majority of the
9 people of the state of New York want, and that
10 is to do something about the availability of
11 guns and the lack of safety they feel on the
12 streets and in their homes and for their
13 children when they go to school because of the
14 proliferation of guns in New York.

15 What's not in this bill is an
16 assault weapons ban that goes beyond the
17 federal standard. This doesn't ban, as
18 Senator Padavan acknowledged, any weapons
19 aren't already banned by the federal
20 government. There are a lot of nasty weapons
21 that are called post-ban weapons that the gun
22 industry has developed since the federal ban
23 that are out there on the streets that we
24 should be banning.

25 This bill does not provide for a

1 statewide licensing program requiring safety
2 courses and having renewable licenses. That
3 is, in my mind, the simplest and most
4 straightforward thing we can do in this state
5 to get control of the situation.

6 And finally, there's no child
7 access prevention law. We're having trigger
8 locks with no requirement that people use
9 them. There are hundreds of children who have
10 died from gun accidents in New York that are
11 preventable if we require adults to lock up
12 their guns. For ten years, a safe storage law
13 has passed the Assembly.

14 I'm very disappointed that when we
15 finally get all of the political momentum to
16 do this in this house, we are not passing a
17 child access prevention law. I urge you
18 that -- I've stood at news conferences urging
19 us to do something about guns this year with a
20 dozen parents who lost children because guns
21 were not safely stored. I don't want to have
22 to go back to those parents and explain why
23 any other children are going to die.

24 I'm afraid we've taken a good step
25 but left a lot on the table, and the work is

1 left to be done.

2 I'm voting for the bill. It's a
3 great step forward, just because I think the
4 Senate now has finally come into step with the
5 people of the state of New York and the
6 overwhelming majority of the people in this
7 country. But there is a lot of work still to
8 do on this issue.

9 Thank you, Mr. President.

10 ACTING PRESIDENT MEIER: Senator
11 Dollinger.

12 SENATOR DOLLINGER: Thank you,
13 Mr. President. On the bill.

14 I think it was six years and five
15 months ago that I stood on the floor of the
16 Senate, after Governor Cuomo had called us
17 into special session in the wake of the Long
18 Island Railroad shooting, to pass a ban on
19 assault weapons. And I think every year since
20 then I've brought a ban, that ban, to the
21 floor of the Senate.

22 And I've had some interesting
23 debates. I remember I was told on the floor
24 of the Senate that I didn't know how to define
25 assault weapons and because I couldn't define

1 them and I couldn't come up with a definition,
2 we shouldn't pass a bill.

3 What I said at the time was we can
4 define assault weapons any way we want.
5 Instead of the industry telling us what an
6 assault weapon is, we could tell the industry
7 what an assault weapon was, and we could ban
8 them. We could restrict them. We could
9 restrict large-volume clips.

10 We could do all that because we had
11 the power of government on our side. We had
12 the power of the majority of the people who
13 had elected people in this chamber to do the
14 right thing, and we could do that regardless
15 of what the industry told us they wanted us to
16 do.

17 I suggested we should do it more
18 than six years ago. I'm pleased we're
19 beginning that process now.

20 But if anyone thinks that we've
21 ended our work to try to rid our society of
22 these weapons of violence, they're wrong.
23 This is not the end point in the continuing
24 battle to make New York something other than
25 the home of most violent crimes. This is a

1 part of a continuing fight for which this is
2 the first step in the right direction.

3 I agree with Senator Schneiderman
4 and others, this is a step that needs to be
5 broadened. We are doing nothing more here
6 than taking the federal definition and the
7 federal weapons, for which it is already a
8 crime in this state and the other fifty states
9 to have these weapons. We are not expanding
10 the list. We are not dealing with the
11 problems of after-ban weapons, weapons that
12 have been designed to get around the federal
13 ban.

14 It seems to me we need to continue
15 to define our terms. We need to continue to
16 define the marketplace. And we need to tell
17 the manufacturers that you can't produce any
18 of these assault-style weapons and sell them
19 here in New York State.

20 I think that's the message we could
21 convey loud and clear. We have conveyed it,
22 but quietly and somewhat ambiguously, I'm
23 afraid.

24 And the other point that needs to
25 be mentioned is that the critical ingredient

1 in protecting children from guns, the
2 consistent use of child safety locks, is not a
3 part of this bill. It's not required. We
4 don't punish those who fail to do it.

5 What I'm afraid will happen is that
6 there will continue to be children exposed to
7 weapons left haphazardly by adults, who will
8 walk in and think it's a toy, who will walk in
9 and mistake the fact that this is a dangerous
10 weapon that could kill the person that they
11 point it toward.

12 We will win the battle against
13 violence in our homes, we will win the battle
14 against violence in our streets when we more
15 effectively than what this bill does, when we
16 more effectively deal with the problem of
17 assault weapons. I think this is a first
18 step. I commend those who have taken the
19 first step.

20 But let's not forget, if what we're
21 trying to do is reduce the overall violence in
22 our society, the best way to do it is get rid
23 of military-style weapons from our residential
24 neighborhoods. This gets rid of some; it
25 doesn't get rid of all. And it doesn't

1 protect the most vulnerable, our children.

2 Let's resolve that in the next
3 legislative session we will do those two
4 important things.

5 ACTING PRESIDENT MEIER: Read the
6 last section.

7 THE SECRETARY: Section 28. This
8 act shall take effect immediately.

9 ACTING PRESIDENT MEIER: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Those recorded in
13 the negative on Calendar Number 1712 are
14 Senators Alesi, Bonacic, DeFrancisco, Farley,
15 Hoffmann, Kuhl, Larkin, Libous, Maltese,
16 Maziarz, Meier, Nozzolio, Saland, Seward,
17 Stachowski, Volker, and Wright. Also Senator
18 Stafford. Also Senator Rath.

19 Ayes, 40. Nays, 19.

20 ACTING PRESIDENT MEIER: The bill
21 is passed.

22 The Secretary will continue to
23 read.

24 THE SECRETARY: Calendar Number
25 1698, by Senator Goodman, Senate Print 2753B,

1 an act to amend the Penal Law and others, in
2 relation to forfeiture.

3 ACTING PRESIDENT MEIER: Read the
4 last section.

5 THE SECRETARY: Section 10. This
6 act shall take effect immediately.

7 ACTING PRESIDENT MEIER: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 59.

11 ACTING PRESIDENT MEIER: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 1699, by Senator Balboni, Senate Print 5625C,
15 an act to amend the Executive Law, in relation
16 to establishing.

17 ACTING PRESIDENT MEIER: Read the
18 last section.

19 SENATOR HEVESI: Explanation.

20 ACTING PRESIDENT MEIER: Senator
21 Balboni, an explanation has been requested of
22 Calendar 1699 by Senator Hevesi.

23 SENATOR BALBONI: Thank you, Mr.
24 President.

25 This bill before us this evening

GOVERNOR PROPOSES FIVE POINT PLAN TO COMBAT GUN VIOLENCE http://www.state.ny.us/governor/press/year00/march15_00.htm
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FOR IMMEDIATE RELEASE:

March 15, 2000

GOVERNOR PROPOSES FIVE POINT PLAN TO COMBAT GUN VIOLENCE

Plan Includes "Gun DNA" to Provide Police with New Tools

Governor George E. Pataki today proposed a five-point plan to combat gun violence in New York State, including a "Gun DNA" program that would make New York a national leader in digitized ballistics tracking and enable law enforcement to trace the history of a handgun.

The five-point plan would require child safety locks to be sold with firearms at the time of sale; ban assault weapons, mirroring federal legislation; close the loophole in federal law by requiring background checks for purchases at all gun shows; require individuals to be 21 years old to get a permit and purchase a handgun; and implement the Gun DNA program.

"While New York State has lead the nation with a 34 percent drop in violent crime since 1994, we still have too much gun violence in our communities. Each year more New Yorkers are killed by guns than die in car crashes -- and that must change," Governor Pataki said. "These common-sense measures will help keep guns away from children and out of the hands of criminals.

"The Gun DNA plan will provide police with an important tool that will give them a running start on their investigations, enabling them to catch violent criminals quicker," the Governor said. "Like our legislation to expand New York's DNA Databank to include all convicted criminals, Gun DNA can provide irrefutable evidence that can solve crimes. Gun DNA is the next step for New York as we continue to develop innovative crime fighting policies."

Under the Gun DNA program, handgun manufacturers who sell to dealers in New York, and/or the dealers themselves would be required to transmit bullets and shell casings from every handgun in their inventory to the State Police's Forensic Investigative Center. The computer images of those bullets and casings would be downloaded into a digitized computer database. Those images would then be used by law enforcement officials attempting to trace the origins of guns used in crimes.

The Gun DNA plan follows up on Governor Pataki proposal last month to further expand the State's DNA Databank by requiring all convicted criminals to submit a DNA sample -- the most far-reaching DNA law in America.

Under a law Governor Pataki signed into law in 1999, only certain convicted criminals are required to submit DNA samples. Yet, that law, which took effect on December 1, lead to an arrest on Monday in the 20- year-old murder of a young Westchester woman. The suspect's DNA sample had been entered into the Databank because he was in State prison for robbery and was required under the new law to submit a sample.

"We have demonstrated that our DNA database can provide crime- solving evidence for police and prosecutors," Governor Pataki said. "We must expand the database and move forward with the Gun DNA plan -- giving law enforcement a powerful new one-two punch to solve crimes."

According to the Federal Bureau of Alcohol Tobacco and Firearms (ATF) nearly 90 percent of all the guns used in crimes are handguns, and an estimated 70 percent of adult inmates reported obtaining their guns from sources other than the black market -- including retailers, family and private owners. A Congressional study of ATF data reported that 1 percent of the nation's federally licensed firearms dealers were responsible for selling nearly one-half of the guns traced to crime in 1998.

New York City Police Commissioner Howard Safir said, "It is with pleasure that I join with Governor Pataki in calling for stricter gun control measures in New York State. The Governor's five point plan is a

GOVERNOR PROPOSES FIVE POINT PLAN TO COMBAT GUN VIOLENCE http://www.state.ny.us/governor/press/year00/march15_00.htm
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common sense approach to tightening the distribution, tracking and maintenance of firearms within our State. Although New York still has some of the toughest gun laws in the nation, this plan will close some of the loopholes that allow guns to end up in the hands of criminals, as well as keep our children safe from gun-related accidents. The benefits of these measures will be seen in the innocent lives that are saved and so I urge the State Legislature to act quickly on these important bills."

Westchester County District Attorney Jeanine Pirro, President of the New York State Association of District Attorneys, said, "It is time to deal with today's reality and that is that more people die in the United States of gun injuries than any other place in the world. This is an effort that will assist law enforcement in prevention, investigation and prosecution of crime."

Richard M. Aborn, member of the Board of Directors of New Yorkers Against Gun Violence, and former President, Handgun Control Inc., said, "The Governor's proposal is precisely the sort of imaginative, comprehensive legislation that we need. It is crystal clear that gun control forms a critical component of an overall crime fighting strategy. This proposal smartly ties together law enforcement provisions with prevention and would make a welcomed addition to the fight to control gun violence."

Child Safety Locks

The child safety lock provision would require any person, firm or corporation that sells firearms to provide at the time of sale, delivery or transfer a gun locking device that will prevent the weapon from being discharged. Additionally, a notice regarding the use of a locking device and the safe storage of weapons must be displayed in all businesses selling weapons in New York.

According to the Center for Disease Control (CDC) firearm injuries in 1994 were the second leading cause of death for young people between the ages of 10 and 24, and there were 787 unintended firearm deaths among persons aged 10 to 29, accounting for 58 percent of all unintentional firearm deaths in the nation that year.

Also according to the CDC, the rate of firearm death in the United States of children ages 0 to 14 is nearly 12 times higher than in 25 other industrialized nations combined. More than 800 Americans, young and old, die each year from guns shot by children under the age of 19.

Assault Weapons Ban

The Governor's plan would also establish criminal sanctions for the possession and sale of assault weapons and large capacity ammunition feeding devices in New York State. Since 1994, federal law has restricted the possession of assault weapons and large capacity clips. This measure would mirror the federal provisions and definitions of "assault weapon" and "large capacity feeding device," as well as the exclusions and exemptions applicable to each.

This proposal would make it a Class D violent felony to possess either an assault weapon or a large capacity ammunition feeding device, and a Class C violent felony to unlawfully sell an assault weapon or large capacity clip. In addition, the unlawful sale of 10 or more of either item is punishable as a Class B violent felony.

Closing the Loophole

Under the federal Brady Law, sales of guns by federally licensed firearms dealers must be accompanied by a background check. Gun shows are not subject to the Brady Law unless a sale at the show involves a federally licensed dealer.

Last spring, Governor Pataki directed that any gun show conducted on State property must require that all sales, regardless of the status of the seller, be accompanied by a background check. This proposal would require background checks on all sales at all gun shows in New York State.

Raising the Legal Age

GOVERNOR PROPOSES FIVE-POINT PLAN TO COMBAT GUN VIOLENCE
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http://www.governor.ny.gov/press/14000/march15_00.htm

The final provision of the Governor's plan would require individuals to be 21 years old to get a permit and purchase a handgun.

More than 70 percent of homicides are committed with a firearm, and each year since 1988, more than 80 percent of homicide victims 15 to 19 years of age were killed with a gun, according to the CDC.

Katherine N. Lapp, New York State Director of Criminal Justice, said, "Recognizing the dangers of alcohol, a minor must be 21 to drink anywhere in the United States. It stands to reason that the same rational should be applied to handgun ownership. The Governor's proposal is common sense criminal justice policy that will undoubtedly save lives."

The Governor's debt reform package coupled with the \$1.25 billion he is seeking to target toward debt reduction would build upon the significant improvements which have been made in recent years in terms of the more responsible management of the State's debt and capital bonding responsibilities.

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FOR IMMEDIATE RELEASE:

June 22, 2000

**GOVERNOR PATAKI, MAJORITY LEADER BRUNO, SPEAKER SILVER
REACH AGREEMENT ON LEGISLATION TO COMBAT GUN VIOLENCE**

Governor George E. Pataki, Majority Leader Joseph L. Bruno and Assembly Speaker Sheldon Silver today announced agreement on a comprehensive plan to combat gun violence, including a "Gun DNA" program that will make New York a national leader in digitized ballistics tracking and enable law enforcement to trace the history of a handgun.

The plan requires child safety locks to be sold with firearms at the time of sale; bans assault weapons, mirroring federal legislation; closes the loophole in federal law by requiring background checks for purchases at all gun shows; requires individuals to be 21 years old to get a permit and purchase a handgun; and implements the Gun DNA program.

"This important legislation will help make our streets safer by reducing gun violence in communities across the State," Governor Pataki said. "These common-sense measures will help keep guns away from children and out of the hands of criminals.

"The Gun DNA plan will provide police with an important tool that will give them a running start on their investigations, enabling them to catch violent criminals quicker," the Governor said. "Like our legislation to expand New York's DNA Databank to include all convicted criminals, Gun DNA can provide irrefutable evidence that can solve crimes. Gun DNA is the next step for New York as we continue to develop innovative crime fighting policies."

Assembly Speaker Sheldon Silver said, "We simply cannot allow the threat of gun violence to terrorize our communities and interfere with the education of our children. These tough anti-gun measures will help keep firearms out of the hands of young people and protect schoolchildren and all New Yorkers."

Senate Majority Leader Joseph L. Bruno said, "This bill is critically important to protect lives, particularly our children, and to assure that people use guns in a safe and responsible fashion. In many ways the legislation mirrors federal law and strengthens our State laws to crack down on gun violence and illegal gun use."

Under the Gun DNA program, handgun manufacturers who sell to dealers in New York, and/or the dealers themselves must transmit shell casings from every handgun to the State Police's Forensic Investigative Center. The computer images of those shell casings will be downloaded into a digitized computer database. Those images will then be used by law enforcement officials attempting to trace the origins of guns used in crimes.

According to the Federal Bureau of Alcohol Tobacco and Firearms (ATF) nearly 90 percent of all the guns used in crimes are handguns, and an estimated 70 percent of adult inmates reported obtaining their guns from sources other than the black market -- including retailers, family and private owners. A Congressional study of ATF data reported that 1 percent of the nation's federally licensed firearms dealers were responsible for selling nearly one-half of the guns traced to crime in 1998.

Senator Frank Padavan said, "By including a ban on assault weapons, this bill will allow New York law enforcers to pursue illegal gun possession charges without involving federal authorities. It will enable prosecutors to open a second front against illegal weapons sales."

Senator Nicholas A. Spano said, "We can no longer stick our heads in the sand pretending people don't gain access to loaded, unlocked handguns. Every other day, there are shootings across the country and too often, it's children who are doing the shooting. We must pace this common-sense measure in place to prevent these needless tragedies from happening.

Senator Roy Goodman said, "This legislation will go a long way toward preventing tragic accidental gun deaths, especially those poignant killings involving children."

Assembly Codes Committee Chair Joseph Lentol said, "We have made much progress toward our goal of preventing the gun-related tragedies that have become all too common in schools across the country." "These actions are essential to stem the rising tide of violent acts and the culture of violence that is increasingly pervasive in our society."

Assemblyman Harvey Weisenberg said, "No responsible gun owner should oppose this legislation, which will promote safe storage of firearms to ensure that children do not have access to a loaded gun. The fact is that one of every three gun-related deaths involving children could have been prevented simply by locking up guns and ammunition."

Assemblywoman Naomi Matusow said, "Today we have taken an historic step in protecting our children and loved ones from the horrors of gun violence. While this action was long overdue, I am pleased that the Governor and Senate have joined the Assembly in supporting a ban on assault weapons and other critical gun safety legislation."

Child Safety Locks

The child safety lock provision requires any person, firm or corporation that sells firearms to provide at the time of sale, delivery or transfer a gun locking device that will be effective in preventing the weapon from being discharged. Additionally, a notice regarding the use of a locking device and the safe storage of weapons must be displayed in all businesses selling weapons in New York.

Assault Weapons Ban

The legislation also establishes criminal sanctions for the possession and sale of assault weapons and large capacity ammunition feeding devices in New York State. Since 1994, federal law has restricted the possession of assault weapons and large capacity ammunition clips. This measure mirrors the federal provisions and definitions of "assault weapon" and "large capacity ammunition feeding device," as well as the exclusions and exemptions applicable to each.

The legislation makes it a Class D violent felony to possess either an assault weapon or a large capacity ammunition feeding device, and a Class D felony to unlawfully sell an assault weapon or large capacity ammunition clip.

Gun Trafficking Interdiction Program (Ari's Law)

A comprehensive initiative to stop guns from entering New York State illegally from other states, this legislation will establish a State Police database to track the origin of guns used in crimes here, and will provide extensive support for the investigation and prosecution of gun traffickers. The legislation is named for Ari Halberstam, who was killed in the 1994 Brooklyn Bridge massacre.

Closing the Loophole

Under the federal Brady Law, sales of guns by federally licensed firearms dealers must be accompanied by a background check. Gun shows are not subject to the Brady Law unless a sale at the show involves a federally licensed dealer.

Last spring, Governor Pataki directed that any gun show conducted on State property must require that all sales, regardless of the status of the seller, be accompanied by a background check. This legislation requires background checks on all sales at all gun shows in New York State.

Penalty for Illegal Purchase of Weapons

GOVERNOR PATRICK MAJORITY LEADER B. LEGISLATION TO COMBAT GUN VIOLENCE/governor/press/year00/june22_2_00.htm
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The legislation establishes criminal sanctions for those who illegally attempt to purchase any weapon knowing they are legally barred from possessing weapons.

Raising the Legal Age

A provision requiring individuals to be 21 years old to get a permit and purchase a handgun.

More than 70 percent of homicides are committed with a firearm, and each year since 1988, more than 80 percent of homicide victims 15 to 19 years of age were killed with a gun, according to the CDC.

Smart Gun Study

A study will be conducted by the Division of State Police to review the existing technology with respect to "smart guns" or personalized firearms -- guns which may only be fired by authorized user.

Reporting Lost and Stolen Guns

Legislation requires all lost or stolen guns to be reported to police within 24 hours of discovery.

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FOR IMMEDIATE RELEASE:

August 9, 2000

GOVERNOR PATAKI SIGNS LEGISLATION TO COMBAT GUN VIOLENCE

Law Makes New York the First State in the Nation to Close the Gun Show Loophole

Governor George E. Pataki today signed into law comprehensive legislation to combat gun violence, including a provision that makes New York the first state to close the so-called gun show loophole by requiring background checks on prospective purchasers for all sales at all gun shows.

The law also requires that firearms be sold with child safety locks; imposes a State ban on assault weapons; raises the minimum age to obtain a permit to purchase a handgun to 21 years old; implements a DNA for Handguns program; establishes a gun trafficking interdiction program; and, directs a study to be conducted on "smart gun" technology.

"This important legislation will help make our streets safer by reducing gun violence in communities across our State," Governor Pataki said. "These common-sense measures will help keep guns out of the hands of criminals and away from children .

"While New York State leads the nation with a 39 percent drop in violent crime since 1994, we still have too much gun violence in our communities," the Governor said. "Each year more New Yorkers are killed by guns than die in car crashes -- and that must change. This new law will help."

Senator Frank Padavan said, "By signing this bill into law, Governor Pataki brings closure to a process that began with the massacre of children in a school playground in Stockton, California more than a decade ago. There is no place for military-style assault weapons in a civilized society. New York law now makes that crystal clear."

Assembly Speaker Sheldon Silver said, "With this new law, we finally provide New Yorkers with the common-sense gun laws that the Assembly has sought for years. This new law strengthens our efforts through the 'Ari's Law' provision I sponsored to halt gun trafficking. It also bolsters our efforts to keep guns out of our state, particularly those capable of mass destruction, and out of the hands of dangerous criminals. It mandates trigger locks on guns sold here and requires responsible gun storage so that horrible firearm accidents involving children can be prevented. And it makes the sale of weapons at gun shows subject to the same driver's license and criminal background checks as already apply to purchases made from traditional gun retailers."

Congresswoman Carolyn McCarthy said, "New York State has once again taken the lead in the nation on gun safety issues. As I've been saying for a long time, gun safety issues are bipartisan, and Governor Pataki's hard work and dedication to stopping gun violence proves it! When I'm back in Washington, I pledge to hold up Governor Pataki's gun bill to my colleagues and say, 'Look what can be done if we work together. Lives can be saved.'"

Catherine Murphy, whose 11-year-old son was accidentally shot and killed by a friend, said, "I thank Governor Pataki for inviting me to witness the signing of this very important bill. Being a Police Officer, I taught my son about gun safety and what a gun can do and how it can take your life. I've also worked since my son's death to make sure that adults understand how important it is to keep guns locked up and safely stored away from children."

Alfredo Valentin, whose 17-year-old son was shot and killed in the Bronx, said, "While I'm not the one signing this bill into law, I feel that if my son and his best friend's death and my family's work with anti-gun violence groups had an impact, then maybe today there is some meaning. For me, the most important part of the Governor's bill is the ballistics tracking system. It will help the police trace the gun and discover its origin."

Richard M. Aborn, former President, Handgun Control, Inc., and member of the Board of Directors, New Yorkers Against Gun Violence, said, "The passage of this multi-dimensional bill not only places New York State firmly at the lead of states with the most effective gun control laws in the nation, but also demonstrates precisely the sort of creative and comprehensive approach that must be taken if we are going to achieve permanent reductions in gun violence.

"Governor Pataki's leadership has proven crucial to advancing the public safety agenda. The Governor's bill smartly ties together steps to prevent gun crimes from taking place. If the highest calling of the criminal justice system is to prevent crime from occurring in the first place, which I believe it is, the Governor has certainly met that calling."

Closing the Gun Show Loophole: Effective upon the Governor's Signature

Under the federal Brady Law, sales of guns by federally licensed firearms dealers must be accompanied by a National Instant Criminal Background Check System (NICS) check on a prospective purchaser. Gun shows are not subject to the Brady Law unless a sale at the show involves a federally licensed dealer. This legislation requires similar background checks for all sales at gun shows in New York State. Effective upon the Governor's signature, New York will be the first State in the nation to close the so-called gun show loophole.

Intentional failure to comply with this requirement, in the case of the gun show operator, will result in civil action by the New York State Attorney General, carrying a fine of up to \$10,000. A seller's non-compliance with this requirement is punishable as a Class A Misdemeanor. According to the FBI, 72 percent of all NICS checks are completed within 30 seconds, and 95 percent are completed within 2 hours. Since the implementation of the NICS program in 1998, 2 percent of the nearly 13 million NICS checks conducted resulted in a denial of purchases.

According to the Bureau of Alcohol Tobacco and Firearms, 14 percent of all illegal gun trafficking investigations are associated with gun shows.

Child Safety Locks: Effective on November 1, 2000

The law will require a firearms retailer to:

- 1) include a child safety locking device with all purchases;
- 2) post notices regarding safe storage of guns in their place of business; and
- 3) include gun safety information with the purchase of any gun. Failure to comply with this mandate is punishable as a Class A Misdemeanor.

According to the Center for Disease Control (CDC) the rate of firearm death in the United States of children ages 0 to 14 is nearly twelve times higher than in the 25 other industrialized nations combined. More than 800 Americans, young and old, die each year from guns shot by children under the age of 19.

Assault Weapons Ban: Effective on November 1, 2000

The new law also establishes criminal sanctions for the possession and sale of assault weapons and large capacity ammunition feeding devices in New York State. Since 1994, federal law has restricted the possession of assault weapons and large capacity ammunition clips. This measure mirrors the federal provisions and definitions of "assault weapon" and "large capacity ammunition feeding device," as well as the exclusions and exemptions applicable to each.

As a result of this legislation, State prosecutors will now be able to prosecute the possession and sale of assault weapons. It will be a Class D violent felony to possess either an assault weapon or a large capacity ammunition feeding device, and a Class D felony to unlawfully sell an assault weapon or large capacity ammunition clip that was manufactured after September 14, 1994.

Raising the Legal Age: Effective on November 1, 2000

This provision requires individuals to be 21 years old -- up from age 18 -- to obtain a permit to purchase a handgun. Exceptions are provided for certain persons under the age of 21 for participation in shooting competitions and for applicants who were honorably discharged from military service.

Each year since 1988, more than 80 percent of homicide victims 15 to 19 years of age were killed with a handgun, according to the CDC.

Criminal Purchase of a Weapon: Effective on November 1, 2000

The legislation establishes criminal sanctions for those who illegally attempt to purchase any weapon knowing they are legally barred from possessing weapons. It creates the new crime of Criminal Purchase of a Weapon, for:

- 1) a person who attempts to purchase any firearm when such person knows that he or she is prohibited by law from possessing such a weapon; or
 - 2) a "straw purchaser," that is, anyone who purchases a firearm for the use of another person, who the purchaser knows is prohibited by law from possessing such a weapon.
- Non-compliance with this law is punishable as a Class A Misdemeanor, carrying a sentence of up to 1 year in jail and/or a fine of up to \$1,000.

A report released by the Bureau of Alcohol, Tobacco and Firearms (ATF) in June 2000, stated that of the more than 1,500 investigations of illegal gun trafficking conducted between July 1996 and December, 1998, almost half involved a "straw purchaser." Straw purchasers were the most common subject of trafficking investigations.

DNA for Handguns: Effective on March 1, 2001

Under the Handgun DNA, handgun manufacturers who sell handguns to dealers in New York, and/or the dealers themselves must transmit shell casings from every handgun to the State Police Forensic Investigative Center. Only Maryland has enacted similar provisions.

The computer images of those shell casings will be downloaded into a digitized computer database, and will be available for comparison by law enforcement agencies attempting to trace the origins of guns used in crimes.

According to the ATF nearly 90 percent of all the guns used in crimes are handguns, and an estimated 70 percent of adult inmates reported obtaining their guns from sources other than the black market -- including retailers, family and private owners. A Congressional study of ATF data reported that 1 percent of the nation's federally licensed firearms dealers were responsible for selling nearly one-half of the guns traced to crime in 1998.

Gun Trafficking Interdiction Program: Effective on November 1, 2000

The legislation directs the State Police, in conjunction with the ATF and State Prosecutors to develop and implement a strategy for the interdiction of guns illegally entering New York State. It also requires the State Police to establish and maintain a Criminal Gun Clearinghouse, which will contain information on all guns seized by law enforcement that were used in the commission of a crime.

According to a recent Congressional study, an estimated 67 percent of the guns traced to crimes committed in New York State in 1999 originated outside the State, and more than 81 percent of the guns traced to crimes in New York City in 1999 originated in other states. Most of those illegal guns were traced to Virginia, Florida, Georgia, and South Carolina.

Failure to Report Lost or Stolen Guns: Effective on November 1, 2000

The legislation requires all lost or stolen guns to be reported to police within 24 hours of discovery. Timely reporting allows law enforcement to launch an immediate investigation in order to trace the gun before it is used in a crime, and/or causes injury or death. Failure to comply with this reporting requirement is a violation, punishable by a fine of up to \$100. According to a 1997 report by the National Institute of Justice, 13 percent of more than 7,000 arrestees interviewed in eleven major urban areas in the United States reported having stolen a gun.

"Smart Gun" Study: Effective upon the Governor's Signature

The legislation directs the State Police, in conjunction with the ATF and the National Law Enforcement and Correction Technology Law, to conduct a comprehensive study of the availability and effectiveness of existing technology for the use of personalized firearms, commonly known as "smart guns," which may only be fired by the authorized user. The State Police are required to submit a written report to the Governor and the Legislature no later than October 1, 2001.

Senator Nick Spano said, "Every day, we read about shootings across the country and all too often, it's children who are pulling the trigger. This bill puts common-sense measures in place to prevent these needless tragedies from happening."

Assemblywoman Naomi Matusow said, "With this law, we are taking a great step forward in our efforts to curb gun violence. The assault weapon ban, which I have sought throughout my tenure and the Assembly has passed time and time again, is a vital component of this package and I have no doubt that it will result in safer streets and communities."

Senator Kemp Hannon said, "This measure will help protect children and help prevent families from being torn apart by gun violence."

Assemblyman Harvey Weisenberg said, "For the past seven years the Assembly has passed legislation promoting the safe storage of firearms to ensure that children do not have access to loaded guns. This common-sense measure will go a long way in preventing senseless gun violence and the resulting pain and suffering."

Senator Roy Goodman said, "I congratulate Governor Pataki on his leadership in passing the most far reaching package of gun controls in the country. I am pleased to have been a sponsor of this most significant legislation."

Assemblyman Joseph Lentol said, "This groundbreaking gun legislation will save lives, while protecting the rights of law abiding gun owners across the state. Only those criminals who are trafficking in illegal weapons need to fear the long arm of the law."

Senator Guy Velella, "Gun violence is tearing too many communities apart. This comprehensive new law will protect our families from guns while combating the scourge of illegal weapons."

Assemblyman Roger Green said, "For too long gun violence has been plaguing our communities, robbing children of their futures and causing immeasurable pain and suffering for their families. I am certain that this long overdue law will reduce the number of guns on our streets and save the lives of children throughout this state."

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Report on the Importability of Certain Shotguns

July 2, 2012

The Gun Control Act of 1968 (GCA) generally prohibits the importation of firearms into the United States. However, pursuant to 18 U.S.C. § 925(d), the GCA creates four narrow exceptions under which the Attorney General shall authorize firearms for importation. Under one such category, section 925(d)(3), the Attorney General shall approve applications for importation when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”).

ATF has long approved the importation of shotguns under section 925(d)(3). However, although ATF previously provided guidance on the sporting purposes test in regard to rifles and handguns, it had provided no such guidance for the importation of shotguns. Prior to publication of the “ATF Study on the Importability of Certain Shotguns” in January 2011 (the 2011 report), there was no definitive guidance to the firearms industry or to the public regarding the standards for the importation of shotguns under this exception. Although shotguns were regularly imported, licensees were forced to rely upon private correspondence from ATF or previously approved applications as guidance on whether a particular shotgun would be approved for importation. Importers could assume that previously approved shotguns satisfied the sporting purposes test, but any changes to the configuration of these shotguns might result in disapproval of an import application. To complicate matters further, although shotguns had retained classic sporting configurations for decades, importers recently sought to import firearms utilizing features typically found on military *rifles*. ATF recognized this and determined that, commensurate with its responsibilities to enforce the law as written, it was necessary to provide guidance on this topic. The resulting 2011 report provides the necessary guidance for importers and the public.

Following publication of the 2011 report, from January 31, 2011 through May 1, 2011, ATF accepted comments from the public and members of the firearms industry regarding the determinations made in the report. ATF has reviewed the comments and, in an effort to provide guidance on the sporting suitability of shotguns, provides the following information to revise the January 2011 report.

Public Comments

ATF received approximately 21,000 individual comments on the 2011 report. Many of the commenters argued, in effect, that 18 U.S.C. 925(d)(3) was unconstitutional and that the sporting purposes test was invalid, or questioned ATF’s interpretation of the sporting purposes test as it was applied to shotguns. Several commenters argued that although the report stated that certain features were not particularly suitable for or readily adaptable to sporting purposes, the features allowed disabled sporting enthusiasts to use shotguns. Principally, the commenters noted that forward pistol grips are an essential feature for this group of sporting enthusiasts.

Approximately 15,000 commenters addressed one or more of three points in opposing the 2011 report. First, the commenters focused on the impact upon an individual's Second Amendment rights. Second, the commenters questioned whether some shotguns could be more dangerous than others and argued that all shotguns are appropriate for home defense. Finally, many commenters questioned the validity of the sporting purposes test as required by the GCA.

ATF understands the concerns expressed in these comments, but notes that Federal law *requires* ATF to make sporting determinations of firearms before they may legally be approved for importation. This is because section 922(l) of the GCA prohibits the importation of *any* firearms or ammunition, and therefore a firearm may be imported only if it meets one of the exceptions found in the statute, 18 U.S.C. § 925. One of these exceptions, the sporting purposes test found in section 925(d)(3), currently provides the only avenue by which firearms or ammunition may legally be imported in any quantity for possession and use by private individuals.

Further, the constitutionality of section 925(d)(3) is in little doubt even after *District of Columbia v. Heller* and its progeny. In *Heller*, the Supreme Court noted that, although not unlimited, “[T]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” Even without this qualifying language, concerns about the constitutionality of section 925(d)(3) or ATF application of this statute are without legal basis.

Specifically, section 925(d)(3) does not limit or pose an undue burden on possession of shotguns. As stated above, section 925(d)(3) actually permits the importation of firearms and has no impact upon the legal possession of more than 743,000 shotguns that were manufactured in the United States in 2010 alone. Section 925(d)(3) and the 2011 report impact only those shotguns that are to be imported and, in fact, prohibit only a small number of shotguns that Congress has determined should not be imported.

A number of the commenters expressed various concerns, including possible negative effects on self defense or the increased costs of firearms because of limitations on the importation of shotguns. However, it should be noted that the sporting purposes test under 18 U.S.C. § 925(d)(3) applies as a limitation only on the *importation* of shotguns. Accordingly, the 2011 report results in no “ban” on any shotguns, even those with nonsporting features. In fact, any domestically made shotguns with these features are unaffected by 18 U.S.C. 925(d)(3) or the report. Therefore, shotguns with these features remain available for self defense.

Second, the 2011 report has not resulted in the denial of any of the most popular shotguns that were previously approved for importation. For example, concerns that the Saiga shotgun would be prohibited from importation based upon the 2011 report are unfounded. As currently imported, the Saiga contains none of the nonsporting features discussed in the report.

Numerous commenters questioned the scope of sporting purposes, including ATF's long-held interpretation that this includes the traditional shooting sports of hunting, skeet and trap shooting and target shooting. Specifically, some argued that “three gun” competitions should be

considered to fall within the scope of sporting purposes. However, as discussed in the 2011 report, the legislative history indicates that this was not meant to include police and military style shooting competitions. Three gun competitions generally require competitors to use a rifle, a pistol and a shotgun to engage targets in timed events. Competitors and organizers emphasize tactical deployment of these firearms to properly engage the targets. These competitions are clearly based upon military or police training and therefore are the type of activity that Congress sought to exclude as “sporting.”

Further, statistics suggest that the United States Practical Shooting Association has approximately 19,000 members who participate in “three gun” or similar competitions. Conversely, the U.S. Fish and Wildlife Service estimates that in 2006, 10.7 million licensed individuals participated in hunting within the U.S. Using this data, those participating in tactical shooting comprised approximately .18% of those participating in hunting. For tactical shooting events to affect the type of shotgun that may be considered as “generally recognized as particularly suitable for or readily adaptable to sporting purposes,” ATF would have to consider use by .18% of the sporting public as determinative of what is “generally recognized” in the community. ATF does not believe such an approach is consistent with the congressional intent in enacting this provision.

Amendments

The 2011 report set forth 10 features that the agency determined are disqualifying under the sporting purposes test. These include the forward pistol grip and the integrated rail system, including rails on the side and underside of the firearm.

In discussing the forward pistol grip, the 2011 report noted that the feature allowed for “continued accuracy during sustained shooting over long periods of time.” The report concluded that this was not particularly advantageous for recognized sporting purposes based upon the fact that, in such activities, a few well-aimed shots are paramount. However, there is a convincing argument that this feature is generally recognized as particularly suitable for or readily adaptable to sporting purposes because it permits accuracy and maneuverability even for activities such as bird hunting or skeet shooting. The forward pistol grip permits a shooter to grip a shotgun at a more natural angle in that the shooter is not required to rotate the forward hand and cradle the firearm during firing. This ergonomic design provides for added comfort and more accurate engagement of fast-moving targets. Therefore, the 2011 report will be amended and this feature removed as a nonsporting feature.

Forward pistol grips are often attached to the underside of firearms through the use of an integrated rail system—another feature that the 2011 report addressed. As noted in the report, an integrated rail system, which includes rails on the side and bottom planes of the firearm, permits a shooter to add several features to include flashlights, lasers or other items that are not particularly suitable for or readily adaptable to sporting purposes. However, recognition of the forward pistol grip as sporting would have little effect if integrated rails systems remain a nonsporting feature. Therefore, because of the use of the forward pistol grip, it necessarily follows that the integrated rail system is generally recognized as particularly suitable for or readily adaptable to sporting purposes.

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Based upon the above, the criteria in the 2011 report are hereby revised to read as follows:

- (1) Folding, telescoping, or collapsible stocks;
- (2) bayonet lugs;
- (3) flash suppressors;
- (4) magazines over 5 rounds, or a drum magazine;
- (5) grenade-launcher mounts;
- (6) light enhancing devices;
- (7) excessive weight (greater than 10 pounds for 12 gauge or smaller);
- (8) excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth).

City of Rochester, NY
Friday, June 21, 2013

Chapter 47. DANGEROUS ARTICLES

[HISTORY: Adopted by the Rochester City Council 11-25-1941. Amendments noted where applicable.]

§ 47-1. (Reserved)

Editor's Note: Former § 47-1, Squawkers, was repealed 11-10-1987 by Ord. No. 87-370.

§ 47-2. Darts, arrows and pointed instruments.

[Amended 6-22-1954; 10-13-1987 by Ord. No. 87-347] No person shall sell, offer for sale, keep for sale, give, loan or lease to any person under 18 years of age any metal-tipped arrow or sharp pointed wooden or plastic arrow, or any sharp pointed wooden, plastic or metal instrument or weapon, so weighted and constructed as to be capable of being thrown or hurled to strike a person or object with its sharpest point, commonly known as a "dart"; or any sword, machete or knife other than a folding pocketknife with no blade more than three inches in length; nor shall any person under 18 years of age possess any such object. The provisions of this section shall not apply to the use of bows and arrows and darts in supervised recreation programs and on archery ranges.

§ 47-3. (Reserved)

Editor's Note: Former § 47-3, Writing implements made of glass, was repealed 11-10-1987 by Ord. No. 87-370.

§ 47-4. Storage and display of firearms, ammunition and explosives.

Editor's Note: Former § 47-4, Sale or gift of dangerous weapons, was repealed 3-16-1993 by Ord. No. 93-62. [Added 9-24-1996 by Ord. No. 96-297]

- A. Purpose and intent. The Council finds that it is necessary to regulate the commercial storage, possession and display of firearms, ammunition or explosives pursuant to § 139-d of the General Municipal Law in order to provide for the public health, safety and welfare of all persons in the City of Rochester. The Council finds that the location of such activities close to residential uses is not compatible with residential uses and can pose a danger to residents through fire or explosion or as a result of burglaries at such locations. The Council therefore intends to regulate the location of such activities and to place additional

regulations upon those activities in order to assure that such activities are conducted in a safe manner. The restrictions found herein shall be in addition to restrictions found in Chapter 120 of the Municipal Code, Zoning Code, and whichever regulations are more restrictive shall be applicable to any potential location where such activities are to be conducted.

[Amended 11-19-2002 by Ord. No. 2002-354]

B. Location. The storage, possession or display of firearms, ammunition or explosives within a building occupied by a residential use, or within a building located within 100 feet of any residential use, which distance shall be measured from the closest point of the building, or portion thereof, used for the storage, possession or display of firearms, ammunition or explosives to the nearest point of the lot line of the property with a residential use, is hereby prohibited.

C. Standards of design, construction and maintenance of buildings and structures in which firearms, ammunition or explosives are stored.

(1) Perimeter doorways. All perimeter doorways shall meet one of the following:

- (a) A windowless steel security door equipped with a high-security cylinder lock;
- (b) A windowed metal door that is equipped with a high-security cylinder lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half-inch diameter no further than six inches apart, or metal grating of at least nine gauge which has no spaces larger than six inches wide measured in any direction, affixed to the exterior or interior of the door; or
- (c) A metal grate or a metal folding scissors gate of at least nine gauge which has no spaces larger than six inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.

(2) Windows. All windows shall be covered with steel bars of a least one-half-inch diameter no further than six inches apart; or metal grating of at least nine gauge which has no spaces larger than six inches wide measured in any direction, affixed to the exterior or interior of the window frame; or a metal grate or a metal folding scissors gate of at least nine gauge which has no spaces larger than six inches wide measured in any direction that is padlocked and affixed to the premises independent of the door and doorframe when the premises is not open for business.

(3) Heating, ventilating, air-conditioning and service openings. All heating, ventilating, air-

conditioning and service openings shall be secured with steel bars, metal grating or an alarm system.

- (4) Alarm systems. Any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be protected by an alarm system which, when activated, directly notifies either a security guard on duty at the location, the Emergency Communications Center (through a designated line other than 911), an answering service or a central station, of a fire or smoke or intrusion or attempted intrusion into the premises. If an answering service or central station is used, the answering service or central station shall provide the service of receiving on a continuous basis through trained employees, emergency signals from the alarm systems and, thereafter, immediately relaying the message by live voice to 911.
- D. Visibility of interior to be maintained at all times. The interior of any building or structure used for the storage, possession and display of firearms, ammunition or explosives shall be visible through any windows at all times when open for business, and no drapes or blinds should be used that would block the view of police or passersby who might observe unusual activity within the premises. The exterior of the premises shall be illuminated at night and during the hours when business is not conducted within.
- E. Combustible materials. Combustible materials shall not be stored in any building or structure or that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.
- F. Fire-extinguishing equipment. Fully operable listed fire-extinguishing equipment shall be maintained in any building or structure used for the storage, possession and display of firearms, ammunition or explosives and made easily accessible.
- G. Smoking and open flames prohibited. Smoking, matches, spark-producing devices and open flames shall be prohibited in any building or structure or that portion thereof used for the storage, possession and display of firearms, ammunition or explosives.
- H. Standards of security for storage of firearms, ammunition or explosives.
 - (1) Storage of ammunition and explosives. All ammunition and explosives shall be stored in compliance with 9 NYCRR 1176 et seq. and 12 NYCRR 39 et seq. Further, all ammunition when being displayed shall be kept in locked cases or behind the counter in an area not accessible to the public.
 - (2) Storage of firearms when open for business.

- (a) No firearms shall be stored, exhibited or displayed in windows of the premises.
 - (b) Firearms storage or inventory areas shall be physically separated from counter and display areas and access to these areas shall be carefully controlled.
 - (c) All firearm display cases shall be kept locked and secured at all times and not readily accessible to the public. All keys to such display cases shall not leave the control of authorized personnel.
 - (d) Trigger locks which disable firearms and prevent them from functioning must be locked to each firearm at all times, or the firearms must be secured in a locked case or be otherwise locked, or the firearms must be dispensed in an area behind the counter that is not accessible to the public. These requirements shall not apply to a firearm being shown to a customer, being repaired, or otherwise being worked on.
- (3) Storage of firearms when not open for business. When not open for business, all firearms shall be stored in accordance with one of the following:
- (a) All firearms shall be stored in a locked fireproof safe or vault located in the business premises;
 - (b) All firearms must be secured by a hardened steel rod or cable of at least 1/8 inch in diameter through the trigger guard of the firearm. The steel cord or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the ready removal of the firearms from the premises; or
 - (c) All firearms shall be secured in a manner that prevents the ready removal of the firearms from the premises, as approved by the Chief of Police or the Chief's designee.
- I. The regulations provided for herein shall not apply to the personal possession, use or ownership of firearms or ammunition therefor.

§ 47-5. Firearms, shotguns, rifles and other dangerous weapons.

Editor's Note: For additional provisions relating to firearms, see Ch. 43, Cemeteries, § 43-11, and Ch. 79, Parks, § 79-5. [Amended 9-11-1951; 1-11-1955; 5-10-1960; 1-27-1970 by Ord. No. 70-36; 5-28-1974 by Ord. No. 74-180; 5-27-1986 by Ord. No. 86-163; 3-16-1993 by Ord.

No. 93-62]

A. Purpose and intent. The Council finds that violent crime is a serious problem in the City and firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the Council finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.

B. As used in this section, the following terms shall have the meanings indicated:

AIR GUN

Any pistol, revolver, rifle or shotgun which fires projectiles by means of a spring or compressed air or other gas, instead of an explosive. **[Amended 12-15-2009 by Ord.**

No. 2009-410 *Editor's Note: This ordinance provided an effective date of 1-11-2010.]*

AMMUNITION

Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

AMMUNITION FEEDING DEVICE

Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun holds in excess of five cartridges, or in the case of a pistol holds in excess of 17 cartridges.

ASSAULT WEAPON

- ① Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six cartridges in the ammunition feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:

- (a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or

- utilized with such rifle and which has a capacity of more than five cartridges;
- or
- (b) In the case of a shotgun, an ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five cartridges.
- (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:
 - (a) A flash suppressor attached to the weapon reducing muzzle flash;
 - (b) A grenade launcher;
 - (c) A sighting device making a target visible at night;
 - (d) A barrel jacket surrounding all or a portion of the barrel to dissipate heat therefrom; or
 - (e) A multi-burst trigger activator.
- (3) Any stockless pistol grip shotgun.
- (4) The following weapons manufactured prior to the effective date of this section.
[NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- (5) For purposes of this section, the term "assault weapon" shall not include any of the following:
 - (a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault weapon";
 - (b) Weapons that do not use cartridges or shells;
 - (c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons;
 - (d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine; or
 - (e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States Law.

DISPOSE OF

To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

DRUG

Any substance listed in § 3306 of the Public Health Law of the State of New York.

DWELLING

As defined in Chapter 120 of the Municipal Code, Zoning Code. **[Amended 11-19-2002 by Ord. No. 2002-354]**

FIREARM

Any pistol or revolver; or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches; or a rifle having one or more barrels less than 16 inches in length or any weapon made from a rifle (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches. For purposes of this definition, the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Such definition, except as otherwise indicated, shall include both loaded and unloaded firearms, except that it shall not include any antique firearm as defined in federal or New York State law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

PARK

As defined in § 79-1 of the Municipal Code.

POSSESS

Have physical possession or otherwise to exercise dominion or control over. The presence in an automobile of any firearm, rifle or shotgun which is openly visible is presumptive evidence of its possession by all persons occupying such automobile at the time such firearm, rifle or shotgun is found, except if such firearm, rifle or shotgun is found in a vehicle for hire.

PUBLIC FACILITY

Any building or facility owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, except buildings or facilities used for educational purposes.

PUBLIC PLACE

Any street, including the sidewalk portion thereof, park, playground, recreation area, cemetery or lot owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, which is generally accessible to the public, except grounds used for educational purposes.

RIFLE

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

SHOTGUN

A weapon designed or redesigned, made or remade and intended to be fired from the

shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

C. No person shall possess a loaded or unloaded firearm, rifle, shotgun or air gun, or a dagger, dangerous knife, dirk, razor or stiletto, in a public place or public facility in the City. This prohibition shall not apply to:

- (1) A police officer or peace officer authorized to possess the same;
- (2) A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment;
- (3) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
- (4) A person transporting a rifle or shotgun in a motor vehicle in the City in accordance with the provisions of § 11-0931, Subdivision 2, of the New York State Environmental Conservation Law, or otherwise transporting an unloaded rifle, shotgun or air gun in the City, provided that the same is completely enclosed or contained in a nontransparent carrying case and either:
 - (a) Said carrying case is locked; or
 - (b) A locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired;
- (5) An authorized person who, for the purpose of shooting practice, possesses a weapon at an established target range in a public place other than a park or public facility;
- (6) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
- (7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.

D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the City unless said firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent

locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.

E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the City. This prohibition shall not apply to:

- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
- (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
- (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law;
- (4) A person disposing of a licensed firearm in accordance with law;
- (5) Disposition by intestate or testamentary bequest; or
- (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.

F. No person shall possess an assault weapon or an ammunition feeding device in the City. This prohibition shall not apply to:

- (1) A police officer or peace officer authorized to possess the same;
- (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
- (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
- (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.

G. No person shall dispose of an assault weapon or ammunition feeding device in the City. This prohibition shall not apply to:

- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
 - (2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- H. No person shall carry a firearm, shotgun, rifle or air gun in the City while such person has 1/10 of 1% or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine or saliva.
- I. No person shall carry a firearm, shotgun, rifle or air gun in the City while in an intoxicated condition.
- J. No person shall carry a firearm, shotgun, rifle or air gun in the City while the person's ability to safely carry such weapon is impaired by the use of a drug.
- K. Any person who carries a firearm, shotgun, rifle or air gun in this City shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two hours after a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection H, I or J of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.
- L. [NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- M. Discharge of weapons; permits.
- (1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun,

submachine gun or a firearm of any kind or description in the City, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.

- (2) The Chief of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Chief may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.

N. The owner of a firearm, shotgun, rifle, assault weapon, machine gun or submachine gun, which becomes lost or stolen, shall report the loss or theft to the Rochester Police Department within 24 hours after the loss or theft is discovered or reasonably should be discovered. The owner of such a weapon shall store the weapon in a safe and secure manner as required in Subsection D of this section and shall check such weapon at least once each week, or immediately upon returning to the City if the owner is absent from the City for more than one week. Failure to perform such a check shall not be a defense to a prosecution for a violation of this subsection. **[Added 9-15-1998 by Ord. No. 98-345**
Editor's Note: This ordinance also relettered former Subsections N and O as Subsections Q and P.]

O. Notwithstanding the penalties contained in § 47-8, a violation of any provision of this section shall be punishable by a fine not to exceed \$1,000 or by imprisonment not to exceed 180 days, or by both such fine and imprisonment.

P. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not constitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

§ 47-6. (Reserved)

Editor's Note: Former Subsection A of § 47-6, Barbed wire, as amended, was redesignated as § 39-307D and former Subsection B was deleted 4-15-1997 by Ord. No. 97-133.

§ 47-7. Discarded refrigerators and other containers.

[Added 9-8-1953] It shall be unlawful for any person, firm or corporation to leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight door or lock which may not be released for opening from inside of said icebox, refrigerator or container. It shall be unlawful for any person, firm or corporation to leave outside of any building or dwelling in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight snap-lock or other device thereon without first removing the said snap-lock or doors from said icebox, refrigerator or container.

§ 47-8. Penalties.

[Amended 7-22-1969 by Ord. No. 69-329] Any person or corporation violating any of the provisions of this chapter shall, upon conviction be punishable by a fine not exceeding \$150, or by imprisonment not exceeding 15 days, or by both such fine and imprisonment, or by a penalty of not less than \$5 nor more than \$500 to be recovered by the City of Rochester in a civil action.

City of Albany, NY
Friday, June 21, 2013

Chapter 193. FIREARMS AND AMMUNITION

Article III. Firearms

[Adopted 5-15-1989]

§ 193-13. Findings and declaration.

The Common Council of the City of Albany finds and declares that the proliferation and use of assault weapons pose and present a threat to the health, safety, welfare and security to the citizens of Albany.

§ 193-14. Scope and intent.

As used herein, "assault weapon" generally means a firearm of such a nature and with such a high rate of fire and/or capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. While it is the intent, then, of this legislation to restrict the use and possession of assault weapons, it is not the intent of the Common Council to place restrictions on the use of those firearms which are primarily designed and intended for hunting, target practice or other legitimate sports or recreational activities.

§ 193-15. Assault weapons.

A. As used herein, "assault weapon" includes any of the following or their copies:

(i) Pistols:

Bushmaster Firearms Company auto pistol

Calico Model 100-P auto pistol

Federal Engineering Corporation XP 450, XP 900

Holmes Firearms MP-83, MP-22 assault pistols

Intratec Tec-9 Auto, Tec-9M, Scorpion auto pistols

Israeli Military Industries UZI pistol

Iver Johnson Enforcer Model 300 auto

Ingram or S.W.D. MAC 10, MAC 11

Spectre double-action auto pistol

Ruger Mini 14

(2) Rifles and shotguns by manufacturers in the United States:

Auto-Ordinance Corporation Thompson M1, Mix, 27 A-1

Thompson A-1 Thompson Deluxe, 1927 A5

Colt AR-15A2-Delta H-Bar, AR-15A2 H-Bar

Federal Engineering Corporation XC-900, XC-450 auto carbines

Springfield Armory Inc. BM-59, SAR-48

S.W.D. Street Sweeper shotgun

Weaver Arms Corporation nighthawk

(3) Rifles and shotguns by manufacturers outside the United States:

Avtomat Kalashnikovs manufactured or imported by American Arms, Bushmaster Firearms, Daewoo, Mitchell, Norinco and Poly Technologies

Beretta AR-70 Sporter rifle

Fabrique National FN, FNC rifle

Franchi LAW 12 auto, SPAS 12 pump/auto shotguns

Heckler and Koch HK 91, 93, 94 rifles

Israeli Military Industries Galil Rifles, UZI carbines

Steyr Daimler-Pusch A.U.G. autoloading rifle

Striker 12 shotgun

Valmet M-76 standard rifle, M78 semi-auto

(4) Any other weapon to be subsequently designated by law.

- B. A copy of any of the weapons listed in Subsection A(1), (2) and (3) of this section shall include any other model by the same manufacturer with the same action design having slight modifications or

enhancements, provided that such weapon as modified or enhanced employs only ammunition of more than .22 caliber rimfire; any weapon with an action design identical or nearly identical to any of the listed weapons which has been designed from, renamed, renumbered or patterned after any of the listed weapons regardless of the manufacturer or country of origin, provided that such weapon employs only ammunition of more than .22 caliber rimfire; or any weapon which has been manufactured and sold by another company under a licensing agreement to manufacture or sell a weapon identical or nearly identical to any of the listed weapons regardless of the company or production or country of origin, provided that such weapon employs only ammunition of more than .22 caliber rimfire.

- C. "Assault weapon" does not include weapons that do not use cartridges, manually operated bolt-action weapons, lever-action weapons, slide-action weapons, single-shot weapons, multiple-barrel weapons, revolving-cylinder weapons except shotguns, semiautomatic weapons that use exclusively a rotary Mannlicher-style magazine, any antique firearm as defined in Article 265 of the Penal Law or any assault weapon which has been modified either to render it permanently inoperable or permanently make it a device no longer defined as an assault weapon.

§ 193-16. Prohibition; penalty; registration of existing weapons.

- A. Any person, firm or corporation who or which shall, on or after the effective date of this article, manufacture, import, keep, offer or expose for sale, give, lend or possess any assault weapon in the City of Albany, except as provided for herein, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding one thousand dollars (\$1,000.) and/or to imprisonment not exceeding one (1) year.
- B. Any individual who lawfully acquired and possessed an assault weapon, as defined herein, prior to the effective date of this article shall register the firearm with the Chief of the Albany Police Department pursuant to the provisions of § 193-17 herein. The registration shall be made within ninety (90) days of the effective date hereof and shall contain a description of the firearm that identifies it uniquely, including all identification marks and the full name, address, date of birth and fingerprints of the owner, together with such other information as the Chief of Police may deem appropriate. Any change of address of the owner must be registered with the Department within ninety (90) days of the change. The Department may charge a fee for registration not to exceed the actual processing costs of the Department. Such registration shall allow the possession of the firearm on the registrant's property or for the uses specified in § 193-17.
- C. On and after the date fixed herein for the registration of assault weapons, no such weapon possessed pursuant hereto shall be sold or transferred to anyone within the City of Albany other than at a licensed gun dealer as defined in the Penal Law. Any individual who obtains title to an assault weapon registered under this section by bequest or intestate succession must, within ninety (90) days, either render the weapon inoperable in accordance with § 193-15, apply for a license pursuant to § 193-17 herein, sell the weapon to a licensed gun dealer or remove the weapon from the City.

§ 193-17. Possession for competitive use; licensing and transportation.

- A. A license for an assault weapon may be issued as provided in Subsection B to possess such weapon for the purpose of loading and firing the same while participating as a competitor in organized competitive matches or league competition under the auspices of or approval by a law enforcement agency or a nationally or state recognized organization that fosters proficiency in or promotes education about firearms or to possess such weapon for the purpose of loading and firing the same at a range located on premises owned and occupied by such agency or organization. Such license shall not permit use for any other purpose and shall not be transferable.
- B. Application for such license as hereinbefore specified shall be made to the Chief of the Albany Police Department on forms prescribed by him for that purpose. Every person so licensed shall have such license on his or her person when engaged in such activity and while transporting such weapon to or from such competition or range.
- C. All such weapons shall be transported in a case, together with a copy of the match program, match schedule or match registration. Where such person is transporting such weapon to or from a range, it shall be transported in a case. Magazines and ammunition for such weapon shall be carried and transported in a locked container separate from the weapon.
- D. A licensed gun dealer, as defined in the Penal Law of the State of New York, who lawfully possessed an assault weapon prior to the effective date of this legislation or who gains possession thereof pursuant to this legislation may transport the weapon between dealers or out of the City, display it at any gun show licensed by a state or local governmental entity or sell it to a person licensed under this section. Any transporting allowed herein shall be accomplished as required in Subsection C.

§ 193-18. Applicability to police and military forces.

The provisions of this article shall not apply to the sale to, purchase by or the use or possession of firearms by the Police Department, Sheriff's office, Marshal's office, corrections officers and the like or the military forces of this state while engaged in the discharge of their official duties or as otherwise permitted by regulation or law.

§ 193-19. Severability.

If any provisions of this article or the application thereof to any person or circumstance is held unenforceable or invalid, in whole or in part, by any court of competent jurisdiction, such holding of unenforceability or invalidity shall in no way affect or impair any other provision of this article or the application of any such provision to any other person or circumstance.

§ 193-20. When effective.

This article shall take effect immediately upon final passage, publication and signing as required by

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law.

New York City Administrative Code(NEW)

§ 10-301 Control and regulation of the disposition, purchase and possession of firearms, rifles, shotguns and assault weapons. Definitions. Whenever used in this chapter the following terms shall mean and include:

1. "Firearm." (a) Any pistol or revolver; (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm. The provisions of this chapter relating to firearms shall not apply to assault weapons except as specifically provided.

2. "Rifle." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger. The provisions of this chapter relating to rifles shall not apply to assault weapons except as specifically provided.

3. "Shotgun." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell, to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. The provisions of this chapter relating to shotguns shall not apply to assault weapons except as specifically provided.

4. "Gunsmith." Any person, firm, partnership, corporation, or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving, or trueing, or who in the course of such business performs any mechanical operation on any rifle, shotgun, firearm, assault weapon or machine gun.

5. "Dealer in firearms." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any pistol or revolver or other firearms which may be concealed upon the person. Dealer in firearms shall not include a wholesale dealer.

6. "Dealer in rifles and shotguns." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle, or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

7. "Ammunition." Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

8. "Dispose of." To dispose of, give away, give, lease, loan, keep for

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sale, offer, offer for sale, sell, transfer and otherwise dispose of.

9. "Deface." To remove, deface, cover, alter, or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

10. "Commissioner." The police commissioner of the city of New York or the commissioner's designee.

11. "Permit." The permit for purchase and possession of rifles and shotguns issued by the commissioner.

12. "Certificate." The certificate of registration for possession of rifles and shotguns.

13. "Serious offense." A serious offense as defined in subdivision seventeen of section 265.00 of the penal law.

14. "Business enterprise." Any proprietorship, company, partnership, corporation, association, cooperative, nonprofit organization or other entity engaged or seeking to engage in the activities regulated pursuant to section 10-302 of this chapter.

15. "Semiautomatic." Any firearm, rifle or shotgun that uses part of the energy of a fired cartridge to expel the case of the fired cartridge and load another cartridge into the firing chamber, and which requires a separate pull of the trigger to fire each cartridge.

16. "Assault weapon."

(a) Any semiautomatic centerfire or rimfire rifle or semiautomatic shotgun which has one or more of the following features:

1. folding or telescoping stock or no stock;
2. pistol grip that protrudes conspicuously beneath the action of the weapon;

3. bayonet mount;

4. flash suppressor or threaded barrel designed to accommodate a flash suppressor;

5. barrel shroud;

6. grenade launcher; or

7. modifications of such features, or other features, determined by rule of the commissioner to be particularly suitable for military and not sporting purposes. In addition, the commissioner shall, by rule, designate specific semiautomatic centerfire or rimfire rifles or semiautomatic shotguns, identified by make, model and/or manufacturer's name, as within the definition of assault weapon, if the commissioner determines that such weapons are particularly suitable for military and not sporting purposes. The commissioner shall inspect such specific designated semiautomatic centerfire or rimfire rifles or semiautomatic shotguns at least three times per year, and shall revise or update such designations as he or she deems appropriate.

(b) Any shotgun with a revolving-cylinder magazine.

(c) Any part, or combination of parts, designed or redesigned or intended to readily convert a rifle or shotgun into an assault weapon.

(d) "Assault weapon" shall not include any rifle or shotgun modified to render it permanently inoperative.

17. "Ammunition feeding device." Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with firearms, rifles, shotguns or assault weapons.

18. "Antique firearm." Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

19. "Special theatrical dealer." Any person, firm, partnership, corporation or company who possesses assault weapons exclusively for the purpose of leasing such assault weapons to special theatrical permittees within the city and for theatrical purposes outside the city.

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20. "Acquire." To gain possession of or title to a weapon through purchase, gift, lease, loan, or otherwise.

New York City Administrative Code(NEW)

§ 10-303.1 Prohibition of the possession or disposition of assault weapons.

a. It shall be unlawful for any person to possess or dispose of any assault weapon within the city of New York, except as provided in subdivision d, e or f of this section or section 10-305. A person who peaceably surrenders an assault weapon to the commissioner pursuant to subdivision d, e or f of this section or subdivision f of section 10-305 shall not be subject to the criminal or civil penalties set forth in this section.

b. Criminal penalty. Any person who shall violate subdivision a of this section shall be guilty of an unclassified misdemeanor punishable by a fine of not more than five thousand dollars or by imprisonment of up to one year, or by both such fine and imprisonment, for each assault weapon disposed of or possessed, provided that the first violation of subdivision a of this section involving possession of an assault weapon as defined in paragraph c of subdivision 16 of section 10-301 shall be an offense punishable by a fine of not more than three hundred dollars or imprisonment of not more than fifteen days, or both, on condition that (1) such first violation is not in conjunction with the commission of a crime and (2) the possessor has not been previously convicted of a felony or a serious offense.

c. Civil penalty. In addition to the penalties prescribed in subdivision b of this section, any person who shall violate subdivision a of this section shall be liable for a civil penalty of not more than twenty-five thousand dollars for each assault weapon disposed of or possessed, to be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction, provided that the first violation by any person of subdivision a of this section involving possession of an assault weapon as defined in paragraph c of subdivision sixteen of section 10-301 shall subject such person to a civil penalty of not more than five thousand dollars on condition that (1) such first violation is not in conjunction with the commission of a crime and (2) the possessor has not been previously convicted of a felony or a serious offense.

d. Disposition of assault weapons by permittees, licensees and previously exempt persons. Any person who, on or after the effective date of this local law, shall possess an assault weapon and a valid permit for possession and purchase of rifles and shotguns and a certificate of registration for such assault weapon, and any licensed dealer in firearms or licensed dealer in rifles and shotguns who is not licensed as a special theatrical dealer and who, on or after the effective date of this local law, shall possess an assault weapon, and any police officer or peace officer who, before the effective date of this local law was exempt from the sections of the administrative code requiring rifle and shotgun permits and certificates, and who, upon the effective date of this local law, is not exempt from the sections of the administrative code prohibiting the possession or disposition of assault weapons, and who, on or after the effective date of this local law, shall possess an assault weapon, shall, within ninety days of the effective date of rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301, either:

(1) peaceably surrender his or her assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department; or (2) lawfully remove such

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assault weapon from the city of New York. All assault weapons possessed
by such permittees, licensees and previously exempt persons shall be

subject to the provisions of this subdivision, whether defined as assault weapons in subdivision 16 of section 10-301 or in rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301.

e. Disposition of assault weapons by non-permittees. Any person who, on or after the effective date of this local law, shall possess an assault weapon and who is not the holder of a valid permit for possession and purchase of rifles and shotguns and a certificate of registration for such assault weapon, shall peaceably surrender his or her assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department, and provided further that heirs and legatees may dispose of assault weapons pursuant to subdivision f of this section.

f. Disposition of assault weapons by heirs and legatees. Any person who acquires an assault weapon on or after the effective date of this local law by the laws of intestacy or by testamentary bequest shall, within ninety days of such acquisition, either: (1) peaceably surrender such assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department; or (2) lawfully remove such assault weapon from the city of New York.

g. Within thirty days of the effective date of rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301, the commissioner shall send by regular mail to every person who has been issued a permit to possess a rifle or shotgun and whose rifle or shotgun the commissioner reasonably believes to be an assault weapon as defined in subdivision 16 of section 10-301 or as defined in such rules, a written notice setting forth the requirements and procedures relating to the disposition of such weapons, and the criminal and civil penalties that may be imposed upon the permittee for unlawful possession or disposition of such weapons. Failure by the commissioner to send, or the permittee to receive, such notice, shall not excuse such permittee for unlawful possession or disposition of such weapons.

h. Surrender of firearms. At the discretion of the police commissioner, any person convicted of violating this section may be subject to immediate surrender of all firearms in his or her possession.

New York City Administrative Code(NEW)

§ 10-305 Exemptions. The sections requiring rifle and shotgun permits and certificates and prohibiting the possession or disposition of assault weapons shall not apply as follows:

a. Minors. Any person under the age of twenty-one years may carry, fire, or use any rifle or shotgun in the actual presence or under the direct supervision of any person who is a holder of a rifle or shotgun permit, or for the purpose of military drill under the auspices of a legally recognized organization and under competent supervision or for the purpose of competition or target practice in and upon a firing range approved by the police commissioner or any other governmental agency authorized to provide such approval, or the national rifle association, which is under competent supervision at the time of such competition or target practice, provided that the rifle or shotgun is otherwise properly registered or exempt from registration by virtue of some other provision of this chapter. This exemption shall not apply to assault weapons.

b. Antiques and ornaments. The provisions of this chapter shall not apply to antique rifles and shotguns which are incapable of being fired or discharged or which do not fire fixed ammunition, or those weapons manufactured prior to eighteen hundred ninety-four and those weapons whose design was patented and whose commercial manufacture commenced prior to eighteen hundred ninety-four and whose manufacture continued after eighteen hundred ninety-four without any substantial alteration in design or function, and for which cartridge ammunition is not commercially available and are possessed as curiosities or ornaments or for their historical significance and value. This exemption shall not apply to assault weapons.

c. Persons in the military service in the state of New York, when duly authorized by regulations issued by the chief of staff to the governor to possess the same, and police officers, provided that such police officers shall not be exempt from the sections prohibiting the possession or disposition of assault weapons except during the performance of their duties as police officers, and other peace officers as defined in section 2.10 of the criminal procedure law, provided that such peace officers (1) are authorized pursuant to law or regulation of the state or city of New York to possess either (a) a firearm within the city of New York without a license or permit therefor, or (b) a rifle, shotgun or assault weapon within the city of New York without a permit therefor; and (2) are authorized by their employer to possess such rifle, shotgun or assault weapon; and (3) shall not possess such rifle, shotgun or assault weapon except during the performance of their duties as peace officers.

d. Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

e. Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

Any such person exempted by subdivisions c, d and e above, may purchase a rifle or shotgun only from a licensed dealer, and must submit to the dealer full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, and military or other official identification. Any dealer who disposes of a rifle or shotgun to any exempt person without securing such identification shall be in violation of these sections.

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f. A person may voluntarily surrender a rifle, shotgun or assault weapon to the police commissioner, provided, that the same shall be

surrendered by such person only after he or she gives notice in writing to the police commissioner, stating such person's name, address, the type of gun to be surrendered, and the approximate time of day and the place where such surrender shall take place and such time of day and place have been approved in writing by the police commissioner. Nothing in this subdivision shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such rifle, shotgun or assault weapon.

g. The regular and ordinary transport of rifles, shotguns or assault weapons as merchandise provided that the person transporting such rifles, shotguns or assault weapons where he or she knows or has reasonable means of ascertaining what such person is transporting, notifies, in writing, the police commissioner of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by the police commissioner as the police commissioner may deem necessary for investigation as to whether the consignee may lawfully receive and possess such rifles, shotguns or assault weapons.

h. Possession by retail customers for the purpose of firing at duly licensed rifle target concessions at amusement parks, piers, and similar locations provided that the rifles to be so used be firmly chained or affixed to the counter and that the individual rifles are registered by the proprietor and that the proprietor is in possession of a rifle and shotgun permit. This exemption shall not apply to assault weapons.

i. (1) Non-residents in transit. Any other provision of this chapter to the contrary notwithstanding, a non-resident of the city of New York who, without a rifle and shotgun permit issued hereunder, enters the city of New York possessing a rifle or shotgun in the course of transit to a destination outside the city of New York, or a non-resident of the city of New York who enters the city of New York possessing an assault weapon in the course of transit to a destination outside the city of New York, shall have a period of twenty-four hours subsequent to such entering to be exempt from penalty under this chapter for the unlawful possession of a rifle, shotgun or assault weapon, provided that such rifle, shotgun or assault weapon shall at all times be unloaded and in a locked case, or locked automobile trunk, and that said non-resident is lawfully in possession of said rifle, shotgun or assault weapon according to the laws of his or her place of residence.

(2) Non-residents purchasing a rifle or shotgun from a licensed dealer. Any other provision of this chapter notwithstanding, a non-resident of the city of New York may purchase a rifle or shotgun from a licensed dealer provided that he or she presents the dealer with documentary evidence of his or her identity and place of residence, and the rifle or shotgun purchased is either personally delivered to the purchaser or transmitted by the dealer directly to the purchaser's residence. In the event the purchaser is traveling from the city by rail, ship or plane, the dealer is hereby authorized to deliver such rifle or shotgun at the appropriate terminal to a representative of the railroad, airline or shipping company, for placement aboard such train, plane or ship. If the rifle or shotgun is personally delivered to the non-resident purchaser within the city of New York, the purchaser shall have the rifle or shotgun removed from the city no later than twenty-four hours after the time of purchase. This exemption shall not apply to assault weapons.

j. Nothing herein contained shall be construed to be a prohibition of the conduct of business by manufacturers, wholesale dealers, interstate shippers, or any other individuals or firms properly licensed by the

federal government, where such prohibition would be preempted by federal law.

k. Special theatrical permit. Nothing herein contained is intended to prevent the possession or utilization of any rifle, shotgun or assault weapon during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer in the pursuance of his or her profession, provided however, that the rifle or shotgun so used shall be properly registered and a special theatrical permit shall have been issued for the rifle, shotgun or assault weapon pursuant to rules established by the commissioner.

l. Persons in possession of, using or transporting rifles which have been issued by the director of civilian marksmanship of the department of the army, pursuant to the provisions of ten U.S.C.A., sections 4307-4309, unto a civilian rifle club, or unto a rifle team representing an educational institution, provided that such persons are members in good standing of an accredited civilian rifle club, or are connected as students or coaches with such educational institution, shall not be required to obtain a certificate of registration for such rifle. This exemption shall not apply to assault weapons.

m. Any resident of the city of New York acquiring a rifle or shotgun outside the city of New York shall within seventy-two hours after bringing such weapon into the city make application for a rifle and shotgun permit, if such person does not already possess such permit, and for a certificate of registration.

Pending the issuance of such permit and/or certificate of registration such resident shall deposit such weapon with a designated officer, at the police precinct in which such person resides, who shall issue a receipt therefor and said weapon shall be retained at the precinct until the resident shall produce the proper permit and registration certificate. This exemption shall not apply to assault weapons.

n. The provisions of section 10-303 of this chapter shall not apply to persons who are members of units of war veterans organizations, which organizations are duly recognized by the veterans administration, pursuant to section three thousand four hundred two of title thirty-eight of the United States code, and who are specifically designated to carry rifles or shotguns by the commanders of said units, while actually participating in, going to or returning from, special events authorized by the commissioner. Said rifles or shotguns, to be carried, must be the property of the unit of the war veterans organization, must be registered with the police commissioner pursuant to section 10-304 of this chapter and must be kept at the unit's headquarters or some central place as registered.

o. Nothing herein shall exempt a member of a unit of a war veterans organization from possessing a permit issued pursuant to section 10-303, to carry rifles or shotguns which are not the property of a war veterans organization; nor shall that member be exempt from registering such rifles or shotguns, pursuant to section 10-304, which said member may personally own, possess or purchase.

p. Any gunsmith licensed pursuant to section 10-302 may engage in the business of gunsmith as authorized by such license.

q. Notwithstanding the provisions of this chapter prohibiting the possession or disposition of assault weapons, a special theatrical dealer may possess such weapons exclusively for the purpose of leasing such weapons to special theatrical permittees within the city and for theatrical purposes outside the city and may, in addition, with the written approval of the commissioner, permanently remove one or more assault weapons from the city.

New York City Administrative Code(NEW)

§ 10-306 Disposition, purchase and possession of ammunition and ammunition feeding devices. a. No person, except a dealer in rifles and shotguns, may dispose of to another person an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition, except in the manner provided in this chapter for the disposition of assault weapons, provided that a person in lawful possession of such ammunition feeding devices may dispose of such ammunition feeding devices to a dealer in rifles and shotguns. No dealer in rifles and shotguns may dispose of such ammunition feeding devices except to a person who is exempt from subdivision a of section 10-303.1 pursuant to section 10-305.

b. No person may possess an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition, unless such person is exempt from subdivision a of section 10-303.1 pursuant to section 10-305, provided that a dealer in rifles and shotguns may possess such ammunition feeding devices for the purpose of disposition authorized pursuant to subdivision a of this section.

c. No ammunition suitable for use in a rifle of any caliber or for any shotgun or ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition shall be disposed of to any person who has not been issued a rifle and shotgun permit and a certificate of registration and who does not exhibit same to the dealer at the time of the purchase. In no event shall rifle or shotgun ammunition be disposed of to or possessed by any such person except for a shotgun, or for the specific caliber of rifle, for which the certificate of registration has been issued. No ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition shall be disposed of by a dealer in rifles and shotguns to any person who does not exhibit proof that he or she is exempt from subdivision a of section 10-303.1 pursuant to section 10-305.

d. It shall be unlawful for any person who is required to have a permit in order to possess a rifle or shotgun and who has not been issued such permit to possess rifle or shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun.

e. A record shall be kept by the dealer of each disposition of ammunition or ammunition feeding devices under this section which shall show the type, caliber and quantity of ammunition or ammunition feeding devices disposed of, the name and address of the person receiving same, the caliber, make, model, manufacturer's name and serial number of the rifle or shotgun for which the purchaser is purchasing ammunition, the date and time of the transaction, and the number of the permit and certificate exhibited or description of the proof of exemption exhibited as required by this section. Such information shall be made available to all law enforcement agencies.

f. Notwithstanding any other provision of this section, ammunition and ammunition feeding devices which are designed for use in rifles or shotguns and which are capable of holding no more than five rounds of rifle or shotgun ammunition may be disposed of or possessed in the same manner and pursuant to the same requirements, rules and exemptions as apply to disposal or possession of rifles, shotguns or assault weapons under this chapter, provided that a special theatrical permittee may not

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possess live ammunition suitable for use in the rifle, shotgun or
assault weapon such permittee is authorized to possess. Ammunition

feeding devices which are designed for use in rifles or shotguns and which are capable of holding more than five rounds of rifle or shotgun ammunition may only be disposed of or possessed in the manner provided in this section.

g. Notwithstanding any other provision of this section, any person authorized to possess a pistol or revolver within the city of New York may possess ammunition suitable for use in such pistol or revolver and a dealer in firearms or dealer in rifles and shotguns may dispose of such ammunition to such person pursuant to subdivision i of section 10-131.

h. Dealers in rifles and shotguns and special theatrical dealers may lease ammunition feeding devices which are designed for use in rifles or shotguns to special theatrical permittees. Special theatrical permittees may possess such ammunition feeding devices subject to the same conditions as apply with respect to such permittee's possession of rifles, shotguns and assault weapons.

RETRIEVE BILL

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LAWS OF NEW YORK, 2013

CHAPTER 1

AN ACT to amend the criminal procedure law, the correction law, the family court act, the executive law, the general business law, the judiciary law, the mental hygiene law, the penal law and the surrogate's court procedure act, in relation to suspension and revocation of firearms licenses; private sale or disposal of firearms, rifles or shotguns and establishing a minimum age to possess a firearm; to amend the family court act, the domestic relations law and the criminal procedure law, in relation to providing for the mandatory suspension or revocation of the firearms license of a person against whom an order of protection or a temporary order of protection has been issued under certain circumstances, or upon violation of any such order; to amend the penal law, in relation to community guns and the criminal sale of a firearm and in relation to the definitions of aggravated and first degree murder; to amend chapter 408 of the laws of 1999 constituting Kendra's Law, in relation to extending the expiration thereof; and to amend the education law, in relation to the New York state school safety improvement teams; and in relation to building aid for metal detectors and safety devices

Became a law January 15, 2013, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 330.20 of the criminal procedure law is amended by adding a new subdivision 2-a to read as follows:

2-a. Firearm, rifle or shotgun surrender order. Upon entry of a verdict of not responsible by reason of mental disease or defect, or upon the acceptance of a plea of not responsible by reason of mental disease or defect, or upon a finding that the defendant is an incapacitated person pursuant to article seven hundred thirty of this chapter, the court shall revoke the defendant's firearm license, if any, inquire of the defendant as to the existence and location of any firearm, rifle or shotgun owned or possessed by such defendant and direct the surrender of such firearm, rifle or shotgun pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law.

§ 2. The criminal procedure law is amended by adding a new section 380.96 to read as follows:

§ 380.96 Obligation of sentencing court pursuant to article four hundred of the penal law.

Upon judgment of conviction of any offense which would require the seizure of firearms, shotguns or rifles from an individual so convicted, and the revocation of any license or registration issued pursuant to article four hundred of the penal law, the judge pronouncing sentence shall demand surrender of any such license or registration and all firearms, shotguns and rifles. The failure to so demand surrender shall

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

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not effect the validity of any revocation pursuant to article four hundred of the penal law.

§ 3. Section 404 of the correction law is amended by adding a new subdivision 3 to read as follows:

3. Within a reasonable period prior to discharge of an inmate committed from a state correctional facility from a hospital in the department of mental hygiene to the community, the director shall ensure that a clinical assessment has been completed to determine whether the inmate meets the criteria for assisted outpatient treatment pursuant to subdivision (c) of section 9.60 of the mental hygiene law. If, as a result of such assessment, the director determines that the inmate meets such criteria, prior to discharge the director of the hospital shall either petition for a court order pursuant to section 9.60 of the mental hygiene law, or report in writing to the director of community services of the local governmental unit in which the inmate is expected to reside so that an investigation may be conducted pursuant to section 9.47 of the mental hygiene law.

§ 4. Subdivisions 1, 2 and 3 of section 842-a of the family court act, as added by chapter 644 of the laws of 1996, paragraph (a) of subdivision 1 as amended by chapter 434 of the laws of 2000, the opening paragraph of subdivision 3 as amended by chapter 597 of the laws of 1998, paragraph (a) of subdivision 3 as amended by chapter 635 of the laws of 1999, are amended to read as follows:

1. ~~[Mandatory and permissive suspension]~~ Suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article, or pursuant to article four, five, six, seven or ten of this act:

(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of ~~[serious]~~ physical injury, as defined in subdivision ~~[ten]~~ nine of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court ~~[may]~~ shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph

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one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

2. ~~[Mandatory and permissive revocation]~~ Revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part, or pursuant to article four, five, six, seven or ten of this act:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of ~~[serious]~~ physical injury, as defined in subdivision ~~[ten]~~ nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

(b) the court ~~[may]~~ shall, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

3. ~~[Mandatory and permissive revocation]~~ Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection or temporary order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection or temporary order of protection issued pursuant to this act or the domestic relations law, or by this court or ~~[an order of protection issued]~~ by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of ~~[serious]~~ physical injury, as defined in subdivision ~~[ten]~~ nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in

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section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court ~~[may]~~ shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

§ 5. Section 846-a of the family court act, as amended by chapter 597 of the laws of 1998, is amended to read as follows:

§ 846-a. Powers on failure to obey order. If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection or temporary order of protection issued pursuant to this act or issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction ~~[in a proceeding]~~ and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order ~~[of protection]~~, make a new order of protection in accordance with section eight hundred forty-two of this part, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court may also immediately revoke such license and may arrange for the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of ~~[serious]~~ physical injury as defined in subdivision ~~[ten]~~ nine of section 10.00 of the penal law or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, such revocation and immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20

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and subdivision six of section 400.05 of the penal law six and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

§ 6. The family court act is amended by adding a new section 446-a to read as follows:

§ 446-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with section eight hundred forty-two-a of this act.

§ 7. The family court act is amended by adding a new section 552 to read as follows:

§ 552. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with section eight hundred forty-two-a of this act.

§ 8. The family court act is amended by adding a new section 656-a to read as follows:

§ 656-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with section eight hundred forty-two-a of this act.

§ 9. The family court act is amended by adding a new section 780-a to read as follows:

§ 780-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with section eight hundred forty-two-a of this act.

§ 10. The family court act is amended by adding a new section 1056-a to read as follows:

§ 1056-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make an order in accordance with section eight hundred forty-two-a of this act.

§ 11. The first undesignated and closing paragraphs of subdivision 3 of section 240 of the domestic relations law, as added by chapter 606 of the laws of 1999, are amended to read as follows:

g. Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

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h. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court ~~[may]~~ shall make ~~[an order]~~ a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with ~~[section]~~ sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act ~~[directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license],~~ as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action.

§ 12. Subdivision 9 of section 252 of the domestic relations law, as added by chapter 606 of the laws of 1999, is amended to read as follows:

9. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court ~~[may take an order]~~ shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with ~~[section]~~ sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act ~~[directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license],~~ as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final ~~[judgement]~~ judgment or settlement of the action.

§ 13. The opening paragraph and paragraph (b) of subdivision 1 of section 530.14 of the criminal procedure law, as added by chapter 644 of the laws of 1996, are amended to read as follows:

~~[Mandatory and permissive suspension]~~ Suspension of firearms license and ineligibility for such a license upon issuance of temporary order of protection. Whenever a temporary order of protection is issued pursuant to subdivision one of section 530.12 or subdivision one of section 530.13 of this article:

(b) the court ~~[may]~~ shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

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§ 14. The opening paragraph and paragraph (b) of subdivision 2 of section 530.14 of the criminal procedure law, as added by chapter 644 of the laws of 1996, are amended to read as follows:

~~[Mandatory and permissive revocation]~~ Revocation or suspension of firearms license and ineligibility for such a license upon issuance of an order of protection. Whenever an order of protection is issued pursuant to subdivision five of section 530.12 or subdivision four of section 530.13 of this article:

(b) the court ~~[may]~~ shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

§ 15. The opening paragraph and paragraph (b) of subdivision 3 of section 530.14 of the criminal procedure law, the opening paragraph as amended by chapter 597 of the laws of 1998 and paragraph (b) as added by chapter 644 of the laws of 1996, are amended to read as follows:

~~[Mandatory and permissive revocation]~~ Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a defendant has been found pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article to have willfully failed to obey an order of protection issued by a court of competent jurisdiction in this state or another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article:

(b) the court ~~[may]~~ shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

§ 16. Section 837 of the executive law is amended by adding a new subdivision 19 to read as follows:

19. Receive names and other non-clinical identifying information pursuant to section 9.46 of the mental hygiene law; provided, however, any such information shall be destroyed five years after such receipt, or pursuant to a proceeding brought under article seventy-eight of the civil practice law and rules determining that an individual is eligible for a license pursuant to section 400.00 of the penal law and otherwise permitted to possess a firearm.

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§ 17. The general business law is amended by adding a new article 39-DDD to read as follows:

ARTICLE 39-DDD

PRIVATE SALE OR DISPOSAL OF FIREARMS, RIFLES AND SHOTGUNS

Section 898. Private sale or disposal of firearms, rifles and shotguns.

§ 898. Private sale or disposal of firearms, rifles and shotguns. 1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § 922, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. For purposes of this section, "immediate family" shall mean spouses, domestic partners, children and step-children.

2. Before any sale, exchange or disposal pursuant to this article, a national instant criminal background check must be completed by a dealer who consents to conduct such check, and upon completion of such background check, shall complete a document, the form of which shall be approved by the superintendent of state police, that identifies and confirms that such check was performed.

3. All dealers shall maintain a record of such transactions conducted pursuant to this section and such record shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his or her special duties, or police officer.

4. A dealer may require that any sale or transfer conducted pursuant to this section be subject to a fee of not to exceed ten dollars per transaction.

5. Any record produced pursuant to this section and any transmission thereof to any government agency shall not be considered a public record for purposes of article six of the public officers law.

6. Any person who knowingly violates the provisions of this article shall be guilty of a class A misdemeanor punishable as provided for in the penal law.

§ 18. Paragraph (q) of subdivision 2 of section 212 of the judiciary law, as added by chapter 491 of the laws of 2008, is amended to read as follows:

(q) Adopt rules to require transmission, to the criminal justice information services division of the federal bureau of investigation or to the division of criminal justice services, of the name and other identifying information of each person who has a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs. Any such records transmitted directly to the federal bureau of investigation must also be transmitted to the division of criminal justice services, and any records received by the division of criminal justice services pursuant to this paragraph may be checked against the statewide license and record database.

§ 19. Subdivision (j) of section 7.09 of the mental hygiene law, as added by chapter 491 of the laws of 2008, is amended to read as follows:

(j) (1) The commissioner, in cooperation with other applicable state agencies, shall ~~be authorized to~~ collect, retain or modify data or

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records, ~~[or to]~~ and shall transmit such data or records: (i) to the division of criminal justice services, or to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3), in accordance with applicable federal laws or regulations, or (ii) to the division of criminal justice services, which may re-disclose such data and records only for determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records, which may not be used for any other purpose, shall include only names and other non-clinical identifying information of persons who have been involuntarily committed to a hospital pursuant to article nine of this chapter, or section four hundred two or subdivision two of section five hundred eight of the correction law, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act, or to a secure treatment facility pursuant to article ten of this chapter.

(2) The commissioner shall establish within the office of mental health an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d) or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

§ 20. The mental hygiene law is amended by adding a new section 9.46 to read as follows:

§ 9.46 Reports of substantial risk or threat of harm by mental health professionals.

(a) For purposes of this section, the term "mental health professional" shall include a physician, psychologist, registered nurse or licensed clinical social worker.

(b) Notwithstanding any other law to the contrary, when a mental health professional currently providing treatment services to a person determines, in the exercise of reasonable professional judgment, that such person is likely to engage in conduct that would result in serious harm to self or others, he or she shall be required to report, as soon as practicable, to the director of community services, or the director's designee, who shall report to the division of criminal justice services whenever he or she agrees that the person is likely to engage in such

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conduct. Information transmitted to the division of criminal justice services shall be limited to names and other non-clinical identifying information, which may only be used for determining whether a license issued pursuant to section 400.00 of the penal law should be suspended or revoked, or for determining whether a person is ineligible for a license issued pursuant to section 400.00 of the penal law, or is no longer permitted under state or federal law to possess a firearm.

(c) Nothing in this section shall be construed to require a mental health professional to take any action which, in the exercise of reasonable professional judgment, would endanger such mental health professional or increase the danger to a potential victim or victims.

(d) The decision of a mental health professional to disclose or not to disclose in accordance with this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability of such mental health professional.

§ 21. Paragraph 5 of subdivision (b) of section 9.47 of the mental hygiene law is renumbered paragraph 7 and two new paragraphs 5 and 6 are added to read as follows:

(5) ensuring evaluation of the need for ongoing assisted outpatient treatment pursuant to subdivision (k) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order;

(6) if he or she has been ordered to provide for or arrange for assisted outpatient treatment pursuant to paragraph five of subdivision (j) of section 9.60 of this article or became the appropriate director pursuant to this paragraph or subdivision (c) of section 9.48 of this article, notifying the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article; and

§ 22. Section 9.48 of the mental hygiene law is amended by adding a new subdivision (c) to read as follows:

(c) Directors of assisted outpatient treatment programs providing services described in paragraph one of subdivision (a) of section 9.60 of this article pursuant to any court order issued under such section shall evaluate the need for ongoing assisted outpatient treatment pursuant to subdivision (k) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order; and shall notify the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article.

§ 23. Paragraph 3 of subdivision (a), paragraphs 2 and 5 of subdivision (j) and subdivisions (k) and (n) of section 9.60 of the mental hygiene law, as amended by chapter 158 of the laws of 2005, are amended to read as follows:

(3) "director of community services" and "local governmental unit" shall have the same meanings as provided in article forty-one of this chapter. The "appropriate director" shall mean the director of community services of the county where the assisted outpatient resides, even if it is a different county than the county where the assisted outpatient treatment order was originally issued.

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(2) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the subject to receive assisted outpatient treatment for an initial period not to exceed ~~[six months]~~ one year. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the proposed treatment is the least restrictive treatment appropriate and feasible for the subject. The order shall state an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment, as set forth in paragraph one of subdivision (a) of this section, which the assisted outpatient is to receive, but shall not include any such category that has not been recommended in both the proposed written treatment plan and the testimony provided to the court pursuant to subdivision (i) of this section.

(5) If the petitioner is the director of a hospital that operates an assisted outpatient treatment program, the court order shall direct the hospital director to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order. ~~[For all other persons]~~ In all other instances, the order shall require the appropriate director ~~[of community services of the appropriate local governmental unit]~~, as that term is defined in this section, to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order.

(k) Petition for additional periods of treatment. (1) Prior to the expiration of an order pursuant to this section, the appropriate director shall review whether the assisted outpatient continues to meet the criteria for assisted outpatient treatment. If, as documented in the petition, the director determines that such criteria continue to be met or has made appropriate attempts to, but has not been successful in eliciting, the cooperation of the subject to submit to an examination, within thirty days prior to the expiration of an order of assisted outpatient treatment, such director may petition the court to order continued assisted outpatient treatment pursuant to paragraph two of this subdivision. Upon determining whether such criteria continue to be met, such director shall notify the program coordinator in writing as to whether a petition for continued assisted outpatient treatment is warranted and whether such a petition was or will be filed.

(2) Within thirty days prior to the expiration of an order of assisted outpatient treatment, the appropriate director or the current petitioner, if the current petition was filed pursuant to subparagraph (i) or (ii) of paragraph one of subdivision (e) of this section, and the current petitioner retains his or her original status pursuant to the applicable subparagraph, may petition the court to order continued assisted outpatient treatment for a period not to exceed one year from the expiration date of the current order. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until such disposition. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section; provided that the time restrictions included in paragraph four of subdivision (c) of this section shall not be applicable. The notice provisions set forth in paragraph six of subdivision (j) of this section shall be applicable. Any court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs

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shall be subject to review after six months by the physician who developed the written treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(n) Failure to comply with assisted outpatient treatment. Where in the clinical judgment of a physician, (i) the assisted outpatient, has failed or refused to comply with the assisted outpatient treatment, (ii) efforts were made to solicit compliance, and (iii) such assisted outpatient may be in need of involuntary admission to a hospital pursuant to section 9.27 of this article or immediate observation, care and treatment pursuant to section 9.39 or 9.40 of this article, such physician may request the appropriate director of community services, the director's designee, or any physician designated by the director of community services pursuant to section 9.37 of this article, to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which hospitalization is necessary pursuant to section 9.27, 9.39 or 9.40 of this article. Furthermore, if such assisted outpatient refuses to take medications as required by the court order, or he or she refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, such physician may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether he or she has a mental illness for which hospitalization is necessary. Upon the request of such physician, the appropriate director, the director's designee, or any physician designated pursuant to section 9.37 of this article, may direct peace officers, acting pursuant to their special duties, or police officers who are members of an authorized police department or force or of a sheriff's department to take the assisted outpatient into custody and transport him or her to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. Such law enforcement officials shall carry out such directive. Upon the request of such physician, the appropriate director, the director's designee, or any physician designated pursuant to section 9.37 of this article, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, or an approved mobile crisis outreach team as defined in section 9.58 of this article shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the appropriate director of community services to receive such persons. Any director of community services, or designee, shall be authorized to direct the removal of an assisted outpatient who is present in his or her county to an appropriate hospital, in accordance with the provisions of this subdivision, based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this subdivision. Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this article. Any continued involuntary retention in such hospital beyond the initial seventy-two hour period shall be in accordance with the provisions of this article relating to the involuntary admission and retention of a person. If at any time during the seventy-two hour period the person is determined not to meet the involuntary admission and retention

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provisions of this article, and does not agree to stay in the hospital as a voluntary or informal patient, he or she must be released. Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

§ 24. Subdivision (g) of section 13.09 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, is amended to read as follows:

(g) (1) The commissioner, in cooperation with other applicable state agencies, shall ~~[be authorized to]~~ collect, retain or modify data or records, ~~[or to]~~ and shall transmit such data or records to: (i) the division of criminal justice services, or to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3), in accordance with applicable federal laws or regulations, or (ii) to the division of criminal justice services, for the purposes of determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records shall include only names and other non-clinical identifying information of persons who have had a guardian appointed for them pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, they lack the mental capacity to contract or manage their own affairs, and persons who have been involuntarily committed to a facility pursuant to article fifteen of this chapter, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act.

(2) The commissioner shall establish within the office for people with developmental disabilities an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d), or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

§ 25. Paragraph 12 of subdivision (c) of section 33.13 of the mental hygiene law, as amended by chapter 158 of the laws of 2005, is amended and a new paragraph 15 is added to read as follows:

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12. to a director of community services as defined in article nine of this chapter or his or her designee, provided that such director or his or her designee (i) requests such information in the exercise of his or her statutory functions, powers and duties pursuant to section 9.37, 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter; or (ii) the disclosure of information is required pursuant to section 9.46 of this chapter.

15. to the division of criminal justice services, names and other non-clinical identifying information for the sole purpose of implementing the division's responsibilities and duties under sections 400.00 and 400.02 of the penal law.

§ 26. Section 10.00 of the penal law is amended by adding a new subdivision 21 to read as follows:

21. "Drug trafficking felony" means any of the following offenses defined in article two hundred twenty of this chapter: violation of use of a child to commit a controlled substance offense as defined in section 220.28; criminal sale of a controlled substance in the fourth degree as defined in section 220.34; criminal sale of a controlled substance in the third degree as defined in section 220.39; criminal sale of a controlled substance in the second degree as defined in section 220.41; criminal sale of a controlled substance in the first degree as defined in section 220.43; criminal sale of a controlled substance in or near school grounds as defined in section 220.44; unlawful manufacture of methamphetamine in the second degree as defined in section 220.74; unlawful manufacture of methamphetamine in the first degree as defined in section 220.75; or operating as a major trafficker as defined in section 220.77.

§ 26-a. The penal law is amended by adding a new section 60.11-a to read as follows:

§ 60.11-a Authorized dispositions; certain criminal possession of a weapon in the third degree offenders.

When a person is to be sentenced upon conviction of the crime of criminal possession of a weapon in the third degree as defined in subdivision ten of section 265.02 of this chapter, the court must sentence such defendant to a determinate sentence as provided in subparagraph (ii) of paragraph (c) of subdivision three of section 70.02 of this chapter, unless a greater minimum sentence is otherwise required by another provision of this chapter.

§ 27. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as amended by chapter 148 of the laws of 2011 and paragraph (c) as amended by chapter 405 of the laws of 2010, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a

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minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven ~~[or]~~, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

§ 28. The opening paragraph of paragraph (c) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision ~~[four]~~ five, seven ~~[or]~~, eight or nine of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11 or the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision ~~[four]~~ five, seven ~~[or]~~, eight or nine of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

§ 29. Paragraph (b) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

(b) For a class C felony, the term must be at least three and one-half years and must not exceed fifteen years, provided, however, that the term must be: (i) at least seven years and must not exceed twenty years where the sentence is for the crime of aggravated manslaughter in the second degree as defined in section 125.21 of this chapter; (ii) at least seven years and must not exceed twenty years where the sentence is for the crime of attempted aggravated assault upon a police officer or

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peace officer as defined in section 120.11 of this chapter; ~~and~~ (iii) at least three and one-half years and must not exceed twenty years where the sentence is for the crime of aggravated criminally negligent homicide as defined in section 125.11 of this chapter; and (iv) at least five years and must not exceed fifteen years where the sentence is imposed for the crime of aggravated criminal possession of a weapon as defined in section 265.19 of this chapter;

§ 30. Paragraph (c) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

(c) For a class D felony, the term must be at least two years and must not exceed seven years, provided, however, that the term must be: (i) at least two years and must not exceed eight years where the sentence is for the crime of menacing a police officer or peace officer as defined in section 120.18 of this chapter; and (ii) at least three and one-half years and must not exceed seven years where the sentence is imposed for the crime of criminal possession of a weapon in the third degree as defined in subdivision ten of section 265.02 of this chapter;

§ 31. The penal law is amended by adding a new section 115.20 to read as follows:

§ 115.20 Criminal facilitation; definitions and construction.

For purposes of this article, such conduct shall include, but not be limited to, making available, selling, exchanging, giving or disposing of a community gun, which in fact, aids a person to commit a crime. "Community gun" shall mean a firearm that is actually shared, made available, sold, exchanged, given or disposed of among or between two or more persons, at least one of whom is not authorized pursuant to law to possess such firearm. "Dispose of" shall have the same meaning as that term is defined in section 265.00 of this chapter. "Share" and "make available" shall, in the case of a firearm, be construed to include knowingly placing such firearm at a location accessible and known to one or more other persons.

§ 32. Section 120.05 of the penal law is amended by adding a new subdivision 4-a to read as follows:

4-a. He recklessly causes physical injury to another person who is a child under the age of eighteen by intentional discharge of a firearm, rifle or shotgun; or

§ 33. Sections 34, 35 and 36 of this act shall be known and may be cited as "Mark's Law".

§ 34. The opening paragraph of subdivision 1 of section 125.26 of the penal law, as added by chapter 765 of the laws of 2005, is amended to read as follows:

With intent to cause the death of another person, he or she causes the death of such person, or of a third person who was a person described in subparagraph (i), (ii), (ii-a) or (iii) of paragraph (a) of this subdivision engaged at the time of the killing in the course of performing his or her official duties; and

§ 35. Paragraph (a) of subdivision 1 of section 125.26 of the penal law is amended by adding a new subparagraph (ii-a) to read as follows:

(ii-a) the intended victim was a firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, or any other individual who, in the course of official duties, performs emergency response activities and was engaged in such activities at the time of killing and the defendant knew or reasonably should have known that the intended victim was such

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firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse; or

§ 36. Paragraph (a) of subdivision 1 of section 125.27 of the penal law is amended by adding a new subparagraph (ii-a) to read as follows:

(ii-a) the intended victim was a firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse involved in a first response team, or any other individual who, in the course of official duties, performs emergency response activities and was engaged in such activities at the time of killing and the defendant knew or reasonably should have known that the intended victim was such firefighter, emergency medical technician, ambulance driver, paramedic, physician or registered nurse; or

§ 37. Subdivision 22 of section 265.00 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

22. "Assault weapon" means ~~[(a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least two of the following characteristics:~~

~~(i) a folding or telescoping stock;~~
~~(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;~~

~~(iii) a bayonet mount;~~
~~(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor;~~

~~(v) a grenade launcher; or~~
~~(b) a semiautomatic shotgun that has at least two of the following characteristics:~~

~~(i) a folding or telescoping stock;~~
~~(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;~~

~~(iii) a fixed magazine capacity in excess of five rounds;~~
~~(iv) an ability to accept a detachable magazine; or~~
~~(c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least two of the following characteristics:~~

~~(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;~~

~~(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;~~

~~(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;~~

~~(iv) a manufactured weight of fifty ounces or more when the pistol is unloaded;~~

~~(v) a semiautomatic version of an automatic rifle, shotgun or firearm; or~~

~~(d) any of the weapons, or functioning frames or receivers of such weapons, or copies or duplicates of such weapons, in any caliber, known as:~~

~~(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);~~

~~(ii) Action Arms Israeli Military Industries UZI and Galil;~~

~~(iii) Beretta Ar70 (SG-70);~~

~~(iv) Colt AR-15;~~

~~(v) Fabrique National FN/FAL, FN/LAR, and FNC;~~

~~(vi) SWD M-10, M-11, M-11/9, and M-12;~~

~~(vii) Steyr AUG;~~

~~(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and~~

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~~(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;~~

~~(e) provided, however, that such term does not include: (i) any rifle, shotgun or pistol that (A) is manually operated by bolt, pump, lever or slide action; (B) has been rendered permanently inoperable; or (C) is an antique firearm as defined in 18 U.S.C. 921(a)(16);~~

~~(ii) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;~~

~~(iii) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine;~~

~~(iv) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to section 922 of 18 U.S.C. as such weapon was manufactured on October first, nineteen hundred ninety three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon; or~~

~~(v) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or any of the weapons defined in paragraph (d) of this subdivision lawfully possessed prior to September fourteenth, nineteen hundred ninety four.]~~

(a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following characteristics:

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a thumbhole stock;

(iv) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(v) a bayonet mount;

(vi) a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator;

(vii) a grenade launcher; or

(b) a semiautomatic shotgun that has at least one of the following characteristics:

(i) a folding or telescoping stock;

(ii) a thumbhole stock;

(iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(iv) a fixed magazine capacity in excess of seven rounds;

(v) an ability to accept a detachable magazine; or

(c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following characteristics:

(i) a folding or telescoping stock;

(ii) a thumbhole stock;

(iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(iv) capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;

(v) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

(vi) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned;

(vii) a manufactured weight of fifty ounces or more when the pistol is unloaded; or

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(viii) a semiautomatic version of an automatic rifle, shotgun or firearm;

(d) a revolving cylinder shotgun;

(e) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in subparagraph (v) of paragraph (e) of subdivision twenty-two of section 265.00 of this chapter as added by chapter one hundred eighty-nine of the laws of two thousand and otherwise lawfully possessed pursuant to such chapter of the laws of two thousand prior to September fourteenth, nineteen hundred ninety-four;

(f) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in paragraph (a), (b) or (c) of this subdivision, possessed prior to the date of enactment of the chapter of the laws of two thousand thirteen which added this paragraph;

(g) provided, however, that such term does not include:

(i) any rifle, shotgun or pistol that (A) is manually operated by bolt, pump, lever or slide action; (B) has been rendered permanently inoperable; or (C) is an antique firearm as defined in 18 U.S.C. 921(a)(16);

(ii) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;

(iii) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine; or

(iv) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to 18 U.S.C. 922 as such weapon was manufactured on October first, nineteen hundred ninety-three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon;

(v) any weapon validly registered pursuant to subdivision sixteen-a of section 400.00 of this chapter. Such weapons shall be subject to the provisions of paragraph (h) of this subdivision;

(vi) any firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof that is validly registered pursuant to subdivision sixteen-a of section 400.00 of this chapter;

(h) Any weapon defined in paragraph (e) or (f) of this subdivision and any large capacity ammunition feeding device that was legally possessed by an individual prior to the enactment of the chapter of the laws of two thousand thirteen which added this paragraph, may only be sold to, exchanged with or disposed of to a purchaser authorized to possess such weapons or to an individual or entity outside of the state provided that any such transfer to an individual or entity outside of the state must be reported to the entity wherein the weapon is registered within seventy-two hours of such transfer. An individual who transfers any such weapon or large capacity ammunition device to an individual inside New York state or without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor unless such large capacity ammunition feeding device, the possession of which is made illegal by the chapter of the laws of two thousand thirteen which added this paragraph, is transferred within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph.

§ 38. Subdivision 23 of section 265.00 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

23. "Large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device, ~~[manufactured after September thirteenth, nineteen hundred ninety-four,~~ that (a) has a capacity of, or that can be readily restored or converted to accept, more than ten

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rounds of ammunition, or (b) contains more than seven rounds of ammunition, or (c) is obtained after the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision and has a capacity of, or that can be readily restored or converted to accept, more than seven rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to subdivision sixteen-a of section 400.00 of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of section 400.03 of this chapter including the check required to be conducted pursuant to such section.

§ 39. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

24. "Seller of ammunition" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling or keeping ammunition.

§ 40. Section 265.01 of the penal law, as added by chapter 1041 of the laws of 1974, subdivision 1 as amended by chapter 257 of the laws of 2008, subdivision 2 as amended by chapter 220 of the laws of 1988, subdivision 3 as amended by chapter 199 of the laws of 2006, subdivision 4 as amended by chapter 357 of the laws of 2011, subdivision 7 as added by chapter 807 of the laws of 1981, and subdivision 8 as added by chapter 646 of the laws of 1986, is amended to read as follows:

§ 265.01 Criminal possession of a weapon in the fourth degree.

A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type sling-shot or slungshot, shirken or "Kung Fu star"; or

(2) He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3) ~~[He or she knowingly has in his or her possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, or upon a school bus as defined in section one hundred forty-two of the vehicle and traffic law, without the written authorization of such educational institution]; or~~

(4) He possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense; or

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(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

(7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.

(8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

§ 41. The penal law is amended by adding a new section 265.01-a to read as follows:

§ 265.01-a. Criminal possession of a weapon on school grounds.

A person is guilty of criminal possession of a weapon on school grounds when he or she knowingly has in his or her possession a rifle, shotgun, or firearm in or upon a building or grounds, used for educational purposes, of any school, college, or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, or upon a school bus as defined in section one hundred forty-two of the vehicle and traffic law, without the written authorization of such educational institution.

Criminal possession of a weapon on school grounds is a class E felony.

§ 41-a. The penal law is amended by adding a new section 265.01-b to read as follows:

§ 265.01-b Criminal possession of a firearm.

A person is guilty of criminal possession of a firearm when he or she: (1) possesses any firearm or; (2) lawfully possesses a firearm prior to the effective date of the chapter of the laws of two thousand thirteen which added this section subject to the registration requirements of subdivision sixteen-a of section 400.00 of this chapter and knowingly fails to register such firearm pursuant to such subdivision.

Criminal possession of a firearm is a class E felony.

§ 41-b. Subdivision 8 of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended and two new subdivisions 9 and 10 are added to read as follows:

(8) Such person possesses a large capacity ammunition feeding device. For purposes of this subdivision, a large capacity ammunition feeding device shall not include an ammunition feeding device lawfully possessed by such person before the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition, or that was manufactured before September thirteenth, nineteen hundred ninety-four, that

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has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; or

(9) Such person possesses an unloaded firearm and also commits a drug trafficking felony as defined in subdivision twenty-one of section 10.00 of this chapter as part of the same criminal transaction; or

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter as part of the same criminal transaction.

§ 42. Subdivision 2 of section 265.09 of the penal law, as added by chapter 650 of the laws of 1996, is amended to read as follows:

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose an additional consecutive sentence of five years to the [~~minimum term of an indeterminate~~] sentence imposed on the underlying class B violent felony offense where the person convicted of such crime displays a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B violent felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of [~~the penal law~~] this chapter.

§ 43. Section 265.17 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

§ 265.17 Criminal purchase or disposal of a weapon.

A person is guilty of criminal purchase or disposal of a weapon when:

1. Knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person [~~attempts to purchase~~] purchases a firearm, rifle or shotgun from another person; or

2. Knowing that it would be unlawful for another person to possess a firearm, rifle or shotgun, he or she purchases a firearm, rifle or shotgun for, on behalf of, or for the use of such other person[~~-~~]; or

3. Knowing that another person is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, a person disposes of a firearm, rifle or shotgun to such other person.

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Criminal purchase or disposal of a weapon is a class [~~A misdemeanor~~] D felony.

§ 44. Intentionally omitted.

§ 45. The penal law is amended by adding a new section 265.19 to read as follows:

§ 265.19 Aggravated criminal possession of a weapon.

A person is guilty of aggravated criminal possession of a weapon when he or she commits the crime of criminal possession of a weapon in the second degree as defined in subdivision three of section 265.03 of this article and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter or a drug trafficking felony as defined in subdivision twenty-one of section 10.00 of this chapter arising out of the same criminal transaction.

Aggravated criminal possession of a weapon is a class C felony.

§ 46. Paragraph 3 of subdivision a of section 265.20 of the penal law, as amended by chapter 210 of the laws of 1999, is amended and a new paragraph 7-f is added to read as follows:

3. Possession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00 or 400.01 of this chapter or possession of a weapon as defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this article which is registered pursuant to paragraph (a) of subdivision sixteen-a of section 400.00 of this chapter or is included on an amended license issued pursuant to section 400.00 of this chapter. In the event such license is revoked, other than because such licensee is no longer permitted to possess a firearm, rifle or shotgun under federal or state law, information sufficient to satisfy the requirements of subdivision sixteen-a of section 400.00 of this chapter, shall be transmitted by the licensing officer to the state police, in a form as determined by the superintendent of state police. Such transmission shall constitute a valid registration under such section. Further provided, notwithstanding any other section of this title, a failure to register such weapon by an individual who possesses such weapon before the enactment of the chapter of the laws of two thousand thirteen which amended this paragraph and may so lawfully possess it thereafter upon registration, shall only be subject to punishment pursuant to paragraph (c) of subdivision sixteen-a of section 400.00 of this chapter; provided, that such a license or registration shall not preclude a conviction for the offense defined in subdivision three of section 265.01 of this article or section 265.01-a of this article.

7-f. Possession and use of a magazine, belt, feed strip or similar device, that contains more than seven rounds of ammunition, but that does not have a capacity of or can readily be restored or converted to accept more than ten rounds of ammunition, at an indoor or outdoor firing range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in arms; at an indoor or outdoor firing range for the purpose of firing a rifle or shotgun; at a collegiate, olympic or target shooting competition under the auspices of or approved by the national rifle association; or at an organized match sanctioned by the International Handgun Metallic Silhouette Association.

§ 46-a. The penal law is amended by adding two new sections 265.36 and 265.37 to read as follows:

§ 265.36 Unlawful possession of a large capacity ammunition feeding device.

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It shall be unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September thirteenth, nineteen hundred ninety-four, and if such person lawfully possessed such large capacity feeding device before the effective date of the chapter of the laws of two thousand thirteen which added this section, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.

An individual who has a reasonable belief that such device is of such a character that it may lawfully be possessed and who surrenders or lawfully disposes of such device within thirty days of being notified by law enforcement or county licensing officials that such possession is unlawful shall not be guilty of this offense. It shall be a rebuttable presumption that such person knows that such large capacity ammunition feeding device may not be lawfully possessed if he or she has been contacted by law enforcement or county licensing officials and informed that such device may not be lawfully possessed.

Unlawful possession of a large capacity ammunition feeding device is a class A misdemeanor.

§ 265.37 Unlawful possession of certain ammunition feeding devices.

It shall be unlawful for a person to knowingly possess an ammunition feeding device that such person lawfully possessed before the effective date of the chapter of the laws of two thousand thirteen which added this section, that has a capacity of, or that can be readily restored or converted to accept more than seven but less than ten rounds of ammunition, where such device contains more than seven rounds of ammunition.

If such device containing more than seven rounds of ammunition is possessed within the home of the possessor, the person so possessing the device shall, for a first offense, be guilty of a violation and subject to a fine of two hundred dollars, and for a second offense, be guilty of a class B misdemeanor and subject to a fine of two hundred dollars and a term of up to three months imprisonment.

If such device containing more than seven rounds of ammunition is possessed in any location other than the home of the possessor, the person so possessing the device shall, for a first offense, be guilty of a class B misdemeanor and subject to a fine of two hundred dollars and a term of up to six months imprisonment, and for a second offense, be guilty of a class A misdemeanor.

§ 47. The penal law is amended by adding a new section 265.45 to read as follows:

§ 265.45 Safe storage of rifles, shotguns, and firearms.

No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who such person knows or has reason to know is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)(1), (4), (8) or (9) shall store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon. For purposes of this section "safe storage depository" shall mean a safe or other secure container which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon contained therein. With respect to a person who is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9), for purposes of this section, this section applies only if such person has been convicted of a crime included in subdivision one of

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section 370.15 of the criminal procedure law and such gun is possessed within five years from the later of the date of conviction or completion of sentence.

A violation of this section shall constitute a class A misdemeanor.

§ 48. Subdivision 1, paragraph (a) of subdivision 3, subdivisions 4, 5, 9, 10, 11, 12 and 15 of section 400.00 of the penal law, subdivision 1 as amended by chapter 189 of the laws of 2000, paragraph (a) of subdivision 3 as designated by chapter 778 of the laws of 1985, subdivision 4 as amended by chapter 331 of the laws of 2005, subdivision 5 as amended by chapter 332 of the laws of 1994, subdivision 9 as amended by chapter 172 of the laws of 1973, subdivision 10 as amended by chapter 447 of the laws of 1997, subdivision 11 as amended by chapter 210 of the laws of 1999, and subdivision 12 as amended by chapter 449 of the laws of 1993, are amended and two new subdivisions 16-a and 16-b are added to read as follows:

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense; (d) who is not a fugitive from justice; (e) who is not an unlawful user of or addicted to any controlled substance as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not illegally or unlawfully in the United States or (ii) has not been admitted to the United States under a nonimmigrant visa subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the Armed Forces under dishonorable conditions; (h) who, having been a citizen of the United States, has not renounced his or her citizenship; (i) who has stated whether he or she has ever suffered any mental illness [~~or been confined to any hospital or institution, public or private, for mental illness~~]; (j) who has not been involuntarily committed to a facility under the jurisdiction of an office of the department of mental hygiene pursuant to article nine or fifteen of the mental hygiene law, article seven hundred thirty or section 330.20 of the criminal procedure law, section four hundred two or five hundred eight of the correction law, section 322.2 or 353.4 of the family court act, or has not been civilly confined in a secure treatment facility pursuant to article ten of the mental hygiene law; [~~te~~] (k) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; [~~ff~~] (l) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; and (ii) persons who were licensed to possess a pistol or revolver prior to the

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effective date of this paragraph are not required to have completed a firearms safety course and test; ~~and (g)~~ (m) who has not had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs; and (n) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

(a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the division of state police or division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record,

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the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. ~~[The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section.]~~ Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

5. Filing of approved applications. (a) The application for any license, if granted, shall be filed by the licensing officer with the clerk of the county of issuance, except that in the city of New York and, in the counties of Nassau and Suffolk, the licensing officer shall designate the place of filing in the appropriate division, bureau or unit of the police department thereof, and in the county of Suffolk the county clerk is hereby authorized to transfer all records or applications relating to firearms to the licensing authority of that county. ~~[The]~~ Except as provided in paragraphs (b) through (f) of this subdivision, the name and address of any person to whom an application for any license has been granted shall be a public record. Upon application by a licensee who has changed his place of residence such records or applications shall be transferred to the appropriate officer at the licensee's new place of residence. A duplicate copy of such application shall be filed by the licensing officer in the executive department, division of state police, Albany, within ten days after issuance of the license. The superintendent of state police may designate that such application shall be transmitted to the division of state police electronically. In

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the event the superintendent of the division of state police determines that it lacks any of the records required to be filed with the division, it may request that such records be provided to it by the appropriate clerk, department or authority and such clerk, department or authority shall provide the division with such records. In the event such clerk, department or authority lacks such records, the division may request the license holder provide information sufficient to constitute such record and such license holder shall provide the division with such information. Such information shall be limited to the license holder's name, date of birth, gender, race, residential address, social security number and firearms possessed by said license holder. Nothing in this subdivision shall be construed to change the expiration date or term of such licenses if otherwise provided for in law. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this chapter shall not be subject to disclosure pursuant to article six of the public officers law.

(b) Each application for a license pursuant to paragraph (a) of this subdivision shall include, on a separate written form prepared by the division of state police within thirty days of the effective date of the chapter of the laws of two thousand thirteen, which amended this section, and provided to the applicant at the same time and in the same manner as the application for a license, an opportunity for the applicant to request an exception from his or her application information becoming public record pursuant to paragraph (a) of this subdivision. Such forms, which shall also be made available to individuals who had applied for or been granted a license prior to the effective date of the chapter of the laws of two thousand thirteen which amended this section, shall notify applicants that, upon discovery that an applicant knowingly provided false information, such applicant may be subject to penalties pursuant to section 175.30 of this chapter, and further, that his or her request for an exception shall be null and void, provided that written notice containing such determination is provided to the applicant. Further, such forms shall provide each applicant an opportunity to specify the grounds on which he or she believes his or her application information should not be publicly disclosed. These grounds, which shall be identified on the application with a box beside each for checking, as applicable, by the applicant, shall be as follows:

(i) the applicant's life or safety may be endangered by disclosure because:

(A) the applicant is an active or retired police officer, peace officer, probation officer, parole officer, or corrections officer;

(B) the applicant is a protected person under a currently valid order of protection;

(C) the applicant is or was a witness in a criminal proceeding involving a criminal charge;

(D) the applicant is participating or previously participated as a juror in a criminal proceeding, or is or was a member of a grand jury; or

(E) the applicant is a spouse, domestic partner or household member of a person identified in this subparagraph or subparagraph (ii) of this paragraph, specifying which subparagraph or subparagraphs and clauses apply.

(ii) the applicant has reason to believe his or her life or safety may be endangered by disclosure due to reasons stated by the applicant.

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(iii) the applicant has reason to believe he or she may be subject to unwarranted harassment upon disclosure of such information.

(c) Each form provided for recertification pursuant to paragraph (b) of subdivision ten of this section shall include an opportunity for the applicant to request an exception from the information provided on such form becoming public record pursuant to paragraph (a) of this subdivision. Such forms shall notify applicants that, upon discovery that an applicant knowingly provided false information, such applicant may be subject to penalties pursuant to section 175.30 of this chapter, and further, that his or her request for an exception shall be null and void, provided that written notice containing such determination is provided to the applicant. Further, such forms shall provide each applicant an opportunity to either decline to request the grant or continuation of an exception, or specify the grounds on which he or she believes his or her information should not be publicly disclosed. These grounds, which shall be identified in the application with a box beside each for checking, as applicable, by the applicant, shall be the same as provided in paragraph (b) of this subdivision.

(d) Information submitted on the forms described in paragraph (b) of this subdivision shall be excepted from disclosure and maintained by the entity retaining such information separate and apart from all other records.

(e) (i) Upon receiving a request for exception from disclosure, the licensing officer shall grant such exception, unless the request is determined to be null and void, pursuant to paragraph (b) or (c) of this subdivision.

(ii) A request for an exception from disclosure may be submitted at any time, including after a license or recertification has been granted.

(iii) If an exception is sought and granted pursuant to paragraph (b) of this subdivision, the application information shall not be public record, unless the request is determined to be null and void. If an exception is sought and granted pursuant to paragraph (c) of this subdivision, the information concerning such recertification application shall not be public record, unless the request is determined to be null and void.

(f) The information of licensees or applicants for a license shall not be disclosed to the public during the first one hundred twenty days following the effective date of the chapter of the laws of two thousand thirteen, which amended this section. After such period, the information of those who had applied for or been granted a license prior to the preparation of the form for requesting an exception, pursuant to paragraph (b) of this subdivision, may be released only if such individuals did not file a request for such an exception during the first sixty days following such preparation; provided, however, that no information contained in an application for licensure or recertification shall be disclosed by an entity that has not completed processing any such requests received during such sixty days.

(g) If a request for an exception is determined to be null and void pursuant to paragraph (b) or (c) of this subdivision, an applicant may request review of such determination pursuant to article seventy-eight of the civil practice laws and rules. Such proceeding must commence within thirty days after service of the written notice containing the adverse determination. Notice of the right to commence such a petition, and the time period therefor, shall be included in the notice of the determination. Disclosure following such a petition shall not be made prior to the disposition of such review.

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9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver may apply at any time to his or her licensing officer for amendment of his or her license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of state police, Albany. The superintendent of state police may authorize that such amendment be completed and transmitted to the state police in electronic form. Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his or her license. Elsewhere than in the city of New York, and in the counties of Nassau and Suffolk, such notification shall be made to the executive department, division of state police, Albany, and in the city of New York to the police commissioner of that city, and in the county of Nassau to the police commissioner of that county, and in the county of Suffolk to the licensing officer of that county, who shall, within ten days after such notification shall be received by him or her, give notice in writing of such change to the executive department, division of state police, at Albany.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter only at

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six year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

(b) All licensees shall be recertified to the division of state police every five years thereafter. Any license issued before the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be recertified by the licensee on or before January thirty-first, two thousand eighteen, and not less than one year prior to such date, the state police shall send a notice to all license holders who have not recertified by such time. Such recertification shall be in a form as approved by the superintendent of state police, which shall request the license holder's name, date of birth, gender, race, residential address, social security number, firearms possessed by such license holder, email address at the option of the license holder and an affirmation that such license holder is not prohibited from possessing firearms. The form may be in an electronic form if so designated by the superintendent of state police. Failure to recertify shall act as a revocation of such license. If the New York state police discover as a result of the recertification process that a licensee failed to provide a change of address, the New York state police shall not require the licensing officer to revoke such license.

11. License: revocation and suspension. (a) The conviction of a licensee anywhere of a felony or serious offense or a licensee at any time becoming ineligible to obtain a license under this section shall operate as a revocation of the license. A license may be revoked or suspended as provided for in section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. Except for a license issued pursuant to section 400.01 of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality.

(b) Whenever the director of community services or his or her designee makes a report pursuant to section 9.46 of the mental hygiene law, the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the appropriate licensing official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

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12. Records required of gunsmiths and dealers in firearms. Any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to section 265.20. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a duplicate copy shall be kept by the licensee. The superintendent of state police may designate that such record shall be completed and transmitted in electronic form. A dealer may be granted a waiver from transmitting such records in electronic form if the superintendent determines that such dealer is incapable of such transmission due to technological limitations that are not reasonably within the control of the dealer, or other exceptional circumstances demonstrated by the dealer, pursuant to a process established in regulation, and at the discretion of the superintendent. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this article shall not be subject to disclosure pursuant to article six of the public officers law. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his special duties, or police officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York, and in the counties of Nassau and Suffolk, and elsewhere in the state to the executive department, division of state police.

15. Any violation by any person of any provision of this section is a class A misdemeanor.

16-a. Registration. (a) An owner of a weapon defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this chapter, possessed before the date of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph, must make an application to register such weapon with the superintendent of state police, in the manner provided by the superintendent, or by amending a license issued pursuant to this section within one year of the effective date of this subdivision except any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 of this chapter transferred into the state may be registered at any time, provided such weapons are registered within thirty days of their transfer into the state. Registration information shall include the registrant's name, date of birth, gender, race, residential address, social

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security number and a description of each weapon being registered. A registration of any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 or a feeding device as defined under subdivision twenty-three of section 265.00 of this chapter shall be transferable, provided that the seller notifies the state police within seventy-two hours of the transfer and the buyer provides the state police with information sufficient to constitute a registration under this section. Such registration shall not be valid if such registrant is prohibited or becomes prohibited from possessing a firearm pursuant to state or federal law. The superintendent shall determine whether such registrant is prohibited from possessing a firearm under state or federal law. Such check shall be limited to determining whether the factors in 18 USC 922 (g) apply or whether a registrant has been convicted of a serious offense as defined in subdivision sixteen-b of section 265.00 of this chapter, so as to prohibit such registrant from possessing a firearm, and whether a report has been issued pursuant to section 9.46 of the mental hygiene law. All registrants shall recertify to the division of state police every five years thereafter. Failure to recertify shall result in a revocation of such registration.

(b) The superintendent of state police shall create and maintain an internet website to educate the public as to which semiautomatic rifle, semiautomatic shotgun or semiautomatic pistol or weapon that are illegal as a result of the enactment of the chapter of the laws of two thousand thirteen which added this paragraph, as well as such assault weapons which are illegal pursuant to article two hundred sixty-five of this chapter. Such website shall contain information to assist the public in recognizing the relevant features proscribed by such article two hundred sixty-five, as well as which make and model of weapons that require registration.

(c) A person who knowingly fails to apply to register such weapon, as required by this section, within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be guilty of a class A misdemeanor and such person who unknowingly fails to validly register such weapon within such one year period shall be given a warning by an appropriate law enforcement authority about such failure and given thirty days in which to apply to register such weapon or to surrender it. A failure to apply or surrender such weapon within such thirty-day period shall result in such weapon being removed by an appropriate law enforcement authority and declared a nuisance.

16-b. The cost of the software, programming and interface required to transmit any record that must be electronically transmitted by the dealer or licensing officer to the division of state police pursuant to this chapter shall be borne by the state.

§ 49. The penal law is amended by adding a new section 400.02 to read as follows:

§ 400.02 Statewide license and record database.

There shall be a statewide license and record database which shall be created and maintained by the division of state police the cost of which shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. Records containing granted license applications shall be periodically checked by the division of criminal justice services against criminal conviction, mental health, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall

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also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database, as otherwise authorized by law, in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

§ 50. The penal law is amended by adding a new section 400.03 to read as follows:

§ 400.03 Sellers of ammunition.

1. A seller of ammunition as defined in subdivision twenty-four of section 265.00 of this chapter shall register with the superintendent of state police in a manner provided by the superintendent. Any dealer in firearms that is validly licensed pursuant to section 400.00 of this article shall not be required to complete such registration.

2. Any seller of ammunition or dealer in firearms shall keep a record book approved as to form by the superintendent of state police. In the record book shall be entered at the time of every transaction involving ammunition the date, name, age, occupation and residence of any person from whom ammunition is received or to whom ammunition is delivered, and the amount, calibre, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such ammunition. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his or her special duties, or police officer. Any record produced pursuant to this section and any transmission thereof to any government agency shall not be considered a public record for purposes of article six of the public officers law.

3. No later than thirty days after the superintendent of the state police certifies that the statewide license and record database established pursuant to section 400.02 of this article is operational for the purposes of this section, a dealer in firearms licensed pursuant to section 400.00 of this article, a seller of ammunition as defined in subdivision twenty-four of section 265.00 of this chapter shall not transfer any ammunition to any other person who is not a dealer in firearms as defined in subdivision nine of such section 265.00 or a seller of ammunition as defined in subdivision twenty-four of section 265.00 of this chapter, unless:

(a) before the completion of the transfer, the licensee or seller contacts the statewide license and record database and provides the database with information sufficient to identify such dealer or seller, transferee based on information on the transferee's identification document as defined in paragraph (c) of this subdivision, as well as the amount, calibre, manufacturer's name and serial number, if any, of such ammunition;

(b) the system provides the licensee or seller with a unique identification number; and

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(c) the transferor has verified the identity of the transferee by examining a valid state identification document of the transferee issued by the department of motor vehicles or if the transferee is not a resident of the state of New York, a valid identification document issued by the transferee's state or country of residence containing a photograph of the transferee.

4. If the database determines that the purchaser of ammunition is eligible to possess ammunition pursuant to state and federal laws, the system shall:

(a) assign a unique identification number to the transfer; and

(b) provide the licensee or seller with the number.

5. If the statewide license and record database notifies the licensee or seller that the information available to the database does not demonstrate that the receipt of ammunition by such other person would violate 18 U.S.C. 922(g) or state law, and the licensee transfers ammunition to such other person, the licensee shall indicate to the database that such transaction has been completed at which point a record of such transaction shall be created which shall be accessible by the division of state police and maintained for no longer than one year from point of purchase, which shall not be incorporated into the database established pursuant to section 400.02 of this article or the registry established pursuant to subdivision sixteen-a of section 400.00 of this article. The division of state police may share such information with a local law enforcement agency. Evidence of the purchase of ammunition is not sufficient to establish probable cause to believe that the purchaser has committed a crime absent other information tending to prove the commission of a crime. Records assembled or accessed pursuant to this section shall not be subject to disclosure pursuant to article six of the public officers law. This requirement of this section shall not apply (i) if a background check cannot be completed because the system is not operational as determined by the superintendent of state police, or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure, as set forth in regulation, or (ii) a dealer or seller has been granted a waiver from conducting such background check if the superintendent of state police determines that such dealer is incapable of such check due to technological limitations that are not reasonably within the control of the dealer, or other exceptional circumstances demonstrated by the dealer, pursuant to a process established in regulation, and at the discretion of such superintendent.

6. If the superintendent of state police certifies that background checks of ammunition purchasers may be conducted through the national instant criminal background check system, use of that system by a dealer or seller shall be sufficient to satisfy subdivisions four and five of this section and such checks shall be conducted through such system, provided that a record of such transaction shall be forwarded to the state police in a form determined by the superintendent.

7. No commercial transfer of ammunition shall take place unless a licensed dealer in firearms or registered seller of ammunition acts as an intermediary between the transferor and the ultimate transferee of the ammunition for the purposes of contacting the statewide license and record database pursuant to this section. Such transfer between the dealer or seller, and transferee must occur in person.

8. A seller of ammunition who fails to register pursuant to this section and sells ammunition, for a first offense, shall be guilty of a violation and subject to the fine of one thousand dollars and for a second offense, shall be guilty of a class A misdemeanor.

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A seller of ammunition that fails to keep any record required pursuant to this section, for a first offense shall be guilty of a violation and subject to a fine of five hundred dollars, and for a second offense shall be guilty of a class B misdemeanor, and the registration of such seller shall be revoked.

§ 51. Section 400.10 of the penal law, as added by chapter 531 of the laws of 1984, and subdivision 1 as amended and subdivision 3 as added by chapter 189 of the laws of 2000, is amended to read as follows:

§ 400.10 Report of theft or loss of a firearm, rifle or shotgun.

1. (a) Any owner or other person lawfully in possession of: (i) a firearm, rifle or, shotgun who suffers the loss or theft of said weapon; (ii) ammunition as well as a firearm, rifle or shotgun who suffers the loss or theft of such ammunition as well as a firearm, rifle or shotgun; or (iii) ammunition and is a dealer in firearms or seller of ammunition who suffers the loss or theft of such ammunition shall within twenty-four hours of the discovery of the loss or theft report the facts and circumstances of the loss or theft to a police department or sheriff's office.

(b) Whenever a person reports the theft or loss of a firearm, rifle ~~or~~, shotgun or ammunition to any police department or sheriff's office, the officer or department receiving such report shall forward notice of such theft or loss to the division of state police via the New York Statewide Police Information Network. The notice shall contain information in compliance with the New York Statewide Police Information Network Operating Manual, including the caliber, make, model, manufacturer's name and serial number, if any, and any other distinguishing number or identification mark on the weapon.

2. The division of state police shall receive, collect and file the information referred to in subdivision one of this section. The division shall cooperate, and undertake to furnish or make available to law enforcement agencies this information, for the purpose of coordinating law enforcement efforts to locate such weapons.

3. Notwithstanding any other provision of law, a violation of paragraph (a) of subdivision one of this section shall be ~~[punishable only by a fine not to exceed one hundred dollars]~~ a class A misdemeanor.

§ 52. The penal law is amended by adding a new section 460.22 to read as follows:

§ 460.22 Aggravated enterprise corruption.

A person is guilty of aggravated enterprise corruption when he or she commits the crime of enterprise corruption and two or more of the acts that constitute his or her pattern of criminal activity are class B felonies or higher, and at least two acts are armed felonies as defined in paragraph (a) of subdivision forty-one of section 1.20 of the criminal procedure law or one act is such an armed felony and one act is a violation of subdivision two of section 265.17 of this chapter or one act is a class B violent felony and two are violations of subdivision two of section 265.17 of this chapter.

Aggravated enterprise corruption is a class A-I felony.

§ 53. The surrogate's court procedure act is amended by adding a new section 2509 to read as follows:

§ 2509. Firearms inventory

Whenever, by regulation, rule or statute, a fiduciary or attorney of record must file a list of assets constituting a decedent's estate, such list must include a particularized description of every firearm, shotgun and rifle, as such terms are defined in section 265.00 of the penal law, that are part of such estate. Such list must be filed with the surro-

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gate's court in the county in which the estate proceeding, if any, is pending and a copy must be filed with the division of criminal justice services.

§ 54. Section 18 of chapter 408 of the laws of 1999, constituting Kendra's Law, as amended by chapter 139 of the laws of 2010, is amended to read as follows:

§ 18. This act shall take effect immediately, provided that section fifteen of this act shall take effect April 1, 2000, provided, further, that subdivision (e) of section 9.60 of the mental hygiene law as added by section six of this act shall be effective 90 days after this act shall become law; and that this act shall expire and be deemed repealed June 30, ~~2015~~ 2017.

§ 55. The education law is amended by adding a new section 2801-b to read as follows:

§ 2801-b. New York state school safety improvement teams. The governor shall establish New York state school safety improvement teams, which may be composed of representatives from the division of homeland security and emergency services, the division of state police, the division of criminal justice services, and the department. Such New York State School Safety Improvement Teams shall review and assess school safety plans submitted, on a voluntary basis, by school districts having a population of less than one hundred twenty-five thousand inhabitants, boards of cooperative educational services, and county vocational education and extension boards, and may make recommendations to improve such school safety plans.

§ 56. Subdivision 6-c of section 3602 of the education law, as amended by section 1 of part A-2 of chapter 62 of the laws of 2003, is amended to read as follows:

6-c. a. Building aid for metal detectors, and safety devices for electrically operated partitions, room dividers and doors. In addition to the apportionments payable to a school district pursuant to subdivision six of this section, the commissioner is hereby authorized to apportion to any school district additional building aid pursuant to this subdivision for its approved expenditures in the base year for the purchase of stationary metal detectors, security cameras, safety devices for electrically operated partitions and room dividers required pursuant to section four hundred nine-f of this chapter, or other security devices approved by the commissioner that increase the safety of students and school personnel, provided, however, that funds apportioned to school districts pursuant to this section shall not supplant funds for existing district expenditures or for existing contractual obligations of the district for stationary metal detectors, security cameras, partition and room divider safety devices, or security devices. Portable or hand held metal detectors shall not be eligible for aid pursuant to this subdivision. Such additional aid shall equal the product of the building aid ratio computed for use in the current year pursuant to paragraph c of subdivision six of this section and the actual approved expenditures incurred in the base year pursuant to this subdivision, provided that the limitations on cost allowances prescribed by paragraph a of subdivision six of this section shall not apply. The commissioner shall annually prescribe a special cost allowance for metal detectors, and security cameras, and the approved expenditures shall not exceed such cost allowance. The commissioner shall annually prescribe a special cost allowance for partition and room divider safety devices, and the approved expenditures shall not exceed such cost allowance.

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b. For projects approved by the commissioner authorized to receive additional building aid pursuant to this subdivision for the purchase of stationary metal detectors, security cameras or other security devices approved by the commissioner that increase the safety of students and school personnel, provided that for purposes of this paragraph such other security devices shall be limited to electronic security systems and hardened doors, and provided that for projects approved by the commissioner on or after the first day of July two thousand thirteen and before the first day of July two thousand sixteen such additional aid shall equal the product of (i) the building aid ratio computed for use in the current year pursuant to paragraph c of subdivision six of this section plus ten percentage points, except that in no case shall this amount exceed one hundred percent, and (ii) the actual approved expenditures incurred in the base year pursuant to this subdivision, provided that the limitations on cost allowances prescribed by paragraph a of subdivision six of this section shall not apply, and provided further that any projects aided under this paragraph must be included in a district's school safety plan. The commissioner shall annually prescribe a special cost allowance for metal detectors, and security cameras, and the approved expenditures shall not exceed such cost allowance.

§ 57. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 58. This act shall take effect immediately; provided, however, that:

a. Sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-six-a, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-nine, forty, forty-one, forty-one-a, forty-one-b, forty-two, forty-three, forty-five, forty-six, forty-six-a, forty-seven, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, and fifty-six of this act shall take effect on the sixtieth day after it shall have become a law;

b. The amendments to subdivision 23 of section 265.00 of the penal law made by section thirty-eight of this act shall take effect on the ninetyeth day after this act shall have become a law, except that the amendments made to paragraph (a) of subdivision 23 shall take effect immediately;

c. The amendments to subdivision 1, paragraph (a) of subdivision 3, and subdivisions 4, 9, 10, 11, 12, 15, and 16-b of section 400.00 of the penal law made by section forty-eight of this act shall take effect one year after this act shall have become a law;

d. The amendments to subdivision 16-a of section 400.00 of the penal law made by section forty-eight of this act shall take effect on the ninetyeth day after this act shall have become a law;

e. The amendments to sections 400.02 and 400.03 of the penal law made by sections forty-nine and fifty of this act shall take effect one year after it shall have become a law; and

f. The amendments to subdivision (b) of section 9.47 and sections 9.48 and 9.60 of the mental hygiene law made by sections twenty-one, twenty-two and twenty-three of this act shall not affect the expiration and

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repeal of such paragraph and sections and shall be deemed repealed therewith.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

Governor Cuomo Signs NY Safe Act in Rochester | Governor Andrew M...

<http://www.governor.ny.gov/press/12162013cuomo-signs-safe-act-roch>

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**Andrew M. Cuomo** - Governor**Related Media**[Printer-friendly version](#)**Governor Cuomo Signs NY Safe Act in Rochester**

Albany, NY (January 16, 2013)

Governor Andrew M. Cuomo today traveled to Rochester to sign the NY SAFE Act (Secure Ammunition and Firearms Enforcement Act) that will give New York State the toughest gun laws in the nation. The legislation includes provisions to keep guns out of the hands of convicted felons and potentially dangerous mental health patients, and ban high capacity magazines and assault weapons.

Under the legislation, New York will be the first state in the nation to ban any magazine that can hold more than seven rounds and run instant background checks on all ammunition purchases at the time of sale. The legislation will allow authorities to track ammunition purchases in real time to alert law enforcement to high volume buys, and will include a statewide standard requiring recertification of pistol permits every five years. The legislation also closes a private sale loophole to ensure all gun purchases are subject to a background check, and toughens criminal penalties on those who use illegal guns.

"It is appropriate to sign the NY SAFE Act here in Rochester, where just weeks ago a gunman senselessly murdered two first responders as they responded to a fire in Webster," Governor Cuomo said. "This new law will limit gun violence through common sense, reasonable reforms that will make New York a safer place to live. When society confronts serious issues, it is the function of government to do something, and the NY SAFE Act will now give New York State the toughest, strongest protections against gun violence in the nation."

State Senator Ted O'Brien said, "For too long, communities across the state suffered from tragedy after tragedy caused by gun violence – and Rochester has been no exception. Governor Cuomo's NY SAFE Act will combat gun violence and help prevent future loss of innocent lives. This new legislation gives our state the toughest gun laws in the country, by banning high capacity magazines and assault weapons and keeping guns out of the hands of potentially dangerous individuals. These are common sense improvements to our gun laws, and the NY SAFE Act will go far in protecting our families. I am proud to support the Governor's new law and work with him to make our state safer for all."

Assembly Majority Leader Joseph D. Morelle said, "After the murder of two brave firefighters in Webster and 20 innocent children in Newtown, New Yorkers demanded action on gun safety. We have responded with what I strongly believe is commonsense legislation that reduces the likelihood of such tragedies by restricting the availability of weapons most able to inflict that kind of carnage. I also believe we can and will accomplish this while respecting the rights of law-abiding gun owners. Among my earliest efforts as a member of the Assembly was a call to curb the availability of high-capacity assault rifles, and it is especially gratifying for me to be a part of this renewed fight to reduce gun violence in our state. I applaud Speaker Silver, Governor Cuomo and the leadership of the state Senate for putting New York at the vanguard of the most critical public safety issue confronting us at this time."

Rochester Mayor Thomas S. Richards said, "I applaud Governor Cuomo and our state legislators for their swift action in passing the Secure Ammunition and Firearms Enforcement Act. This is a strong response that keeps the safety of our citizens a top priority. I am proud that New York State has taken the lead nationally in strengthening gun laws with the passage of the NY SAFE Act. Too many lives have been destroyed by gun violence. Our community is still healing from the loss of two of our first responders, Lt. Mike Chiapperini and Tomasz Kaczowka. While we recognize there is no single solution to putting an end to violence, this critical legislation will have a significant impact. The comprehensive law will help us to better safeguard our communities and protect our families going forward. We hope that other states will not stall in adopting similar reforms....#157;

Rochester Police Chief James Sheppard said, "In recent years, the City of Rochester has not been immune to senseless acts of gun and gang violence. Just last month, an unbearable tragedy occurred close to Rochester, in Webster, where two local heroes were lost to gun violence. The Governor recognized this had to stop and under his legislation, law enforcement will now have the tools we need to crack down on gun violence, allowing us to track weapon ownership, regulate ammunition sales and keep our communities safer. I applaud Governor Cuomo for his leadership, which has made the State of New York a national model for sensible gun control."

Key provisions of the NY SAFE Act include:

Mental Health Alert: Under the legislation, mental health professionals will be required to report to local mental health officials when there is reason to believe a patient is likely to engage in conduct that will cause serious harm to themselves or others. This information will then be crosschecked against the new comprehensive, and regularly updated, gun registration database. If the patient possesses a gun, the license will be suspended and law enforcement will be authorized to remove the person's firearm.

Tougher assault weapons ban: The legislation outlines a stricter definition of assault weapons, and implements an immediate ban of defined assault weapons. Under the stricter definitions, semi-automatic pistols and rifles with detachable magazines and one military style feature will be considered assault weapons. Semi-automatic shotguns with one military style feature will also be considered assault weapons. Assault weapons possessed before the effective date must be registered within a year and recertified every five years. Owners of grandfathered assault weapons may only sell out of state or through an in state federal firearms licensee. Under the legislation, the Bushmaster used in the Newtown, Connecticut shooting will be illegal.

Stronger regulations on ammunition: Under the legislation, New York will have the strongest ban on high capacity magazines in the country, with a limit on capacity of seven rounds, down from the current limit of ten. The legislation includes a ban on possession of pre-1994 high capacity magazines, and will require owners to sell the banned magazines out of state within one year. Existing ten round magazines can be grandfathered in, but may only be loaded with 7 rounds.

To track high-volume ammunition purchasers, the legislation will make New York the first state in the nation to track ammo purchases in real time. All dealers in ammunition must be registered with the State Police, and each sale will require both a state background check and transmission of a record of the sale to State Police, so as to enable alerts of high volume purchases. Ammunition records will be purged within a year of submission. Dealers must report any loss of inventory. The legislation will also include a ban on direct internet sales of ammunition. Ammunition ordered over the internet must be delivered in a face-to-face transaction with a firearms dealer and the purchaser will be subject to the state background check. The Aurora shooter reportedly amassed 6000 rounds through direct online purchases.

Statewide recertification of handguns and assault weapons: The legislation will require individuals who have a handgun license or have registered an assault weapon in New York State to recertify every five years through their county of residence. With this more accurate information, the state will establish an electronic gun permit database that may be run against other databases containing the names of people who will be disqualified from possessing firearms, including those with criminal convictions, involuntary commitments, and those subject to orders of protection, as well as death records.

Universal Background Checks – closing the private sales loophole: The legislation will require all gun transfers between private parties, except immediate family, to be conducted through a federal firearms licensee, subject to a federal National Instant Criminal Background Check.

Webster Provision: Under the legislation, murder of a first responder who is engaged in his or her duties will become a Class A-1 felony, with a mandatory penalty of life in prison without parole. This provision was created to honor the memory of Lt. Mike Chiapperini and Tomasz Kaczowka who were victims of a fatal shooting in Webster, New York, on December 24, 2012.

Extending and Strengthening Kendra's Law: Kendra's law will be extended for two years – through 2017 – and the period of mandatory outpatient treatment will be extended from 6 months to one year. In addition a review will be required before a mentally ill inmate is released.

Protecting Families: When a judge issues an order of protection and finds a substantial risk that the individual subjected to the order will use a gun against the person protected by the order, the judge is required to order the surrender of the weapon.

Safe Storage: To better ensure that guns are kept inaccessible to those who are barred from possessing them, the legislation requires safe storage of firearms in households where individuals live who have been convicted of a crime, involuntarily committed, or are subject to an order of protection. Existing state law already requires that all guns sold at retail in the state be sold with a gun lock.

Keeps Guns Out of Schools: Under the legislation, the penalty for possession of a firearm on school grounds or a school bus will be increased from a misdemeanor to a Class E Felony. The state's SAVE Act (Safe Schools Against Violence in Education) requires school districts to develop school safety plans including evacuation, dismissal, community response, and alerting family, law enforcement and other schools in the area in the event of a violent incident or other emergency. The legislation will allow school districts to submit their school safety plans to a newly created New York State School Safety Improvement Team, consisting of representatives from state agencies with relevant expertise (e.g. DHSES, State Police, DCJS), which will review plans and assist localities in developing plans. Some designated safety system improvements will be eligible for enhanced re-imbursement under the state's School Building Aid formula. New York City, Buffalo, Rochester, Yonkers and Syracuse will be exempted.

Tougher penalties for illegal gun use: The legislation establishes tougher penalties for those who use illegal guns as well as measures to help combat gang violence. Tougher penalties under the legislation include:

- Possession of an unloaded gun will be raised from a misdemeanor to a Class E felony.
- Recklessly injuring a child by a firearm will become a Class D felony
- The purchase of a gun for someone the buyer knows to be disqualified
- because of a conviction of a crime, an involuntary commitment or other disqualifier, will be raised to a Class D felony from a misdemeanor. This also raised to a class D felony the sale or transfer of a firearm to an individual known to be prohibited from possessing a gun.
- Tougher penalties to permit more effective gang prosecutions, allowing a prosecutor to ask for 25 to life (previously was just 15 years) for an entire group when a gang is involved in murder.

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Governor Cuomo Signs NY Safe Act in Rochester | Governor Andrew M...

<http://www.governor.ny.gov/press/12162013cuomo-signs-safe-act-roch>

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- Using or carrying a firearm during drug trafficking or a violent felony will include a 5 year mandatory minimum sentence if the gun is loaded and a 3½ year mandatory minimum if unloaded. (The Court could impose a lower sentence in drug trafficking cases depending on mitigating factors).
- Sharing a gun with an individual who is not authorized to possess a gun and commits a crime will constitute criminal facilitation

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PPS-11 (04/13)

NEW YORK STATE POLICE
ASSAULT WEAPON(S) REGISTRATION**INSTRUCTIONS:**

- Print or type in black ink only.
- Mail your completed application to the address listed on the back.

APPLICANT'S INFORMATION:

Last Name		First Name		MI	Date of Birth (MM/DD/YYYY)	Gender
Social Security Number (Last 4 Digits)		NY Driver's License (or NY Non-Driver ID) Number		Email Address		
XXX-XX-						
Mailing Address (and physical address if different)				County of Residence		

ASSAULT WEAPON INFORMATION:

WEAPON TYPE	MANUFACTURER	MODEL	CALIBER	SERIAL NUMBER	ANTIQUE
<input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Pistol					<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Pistol					<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Pistol					<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Rifle <input type="checkbox"/> Shotgun <input type="checkbox"/> Pistol					<input type="checkbox"/> Yes <input type="checkbox"/> No

ANTIQUE HIGH CAPACITY MAGAZINE:

MANUFACTURER OF ASSOCIATED WEAPON	MODEL	CALIBER	CAPACITY

I hereby affirm that I am not prohibited from possessing a firearm under state or federal law. False statements made herein are punishable as a class A misdemeanor.

Date: _____

(Applicant Signature)

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Mail to:
New York State Police
Pistol Permit Bureau
1220 Washington Avenue, Building 22
Albany, New York 12226-2252

FOR OFFICIAL USE ONLY

Registration Approved by:

Date:

Time:

Registration Number:

*(Weapon(s) must be recertified within five years from this date.)***NOTE:**

- Weapon(s) can only be transferred, exchanged, or disposed of, to an authorized firearms dealer, law enforcement agency or officer, or an individual or entity outside of New York State. Transfers outside of New York State must be reported to the New York State Police Pistol Permit Bureau, where the weapon is registered, within 72 hours of such transfer.
- The New York State Police, Pistol Permit Bureau must be notified of ANY changes/corrections to your information (i.e.: name, address, email address). Notification can be made electronically or by mailing an ASSAULT WEAPON(S) REGISTRATION AMENDMENT (PPB-13) form. This form is available on the New York State Police website at www.troopers.ny.gov

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**Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment.**

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2013

Prepared Testimony by Laurence H. Tribe^{*}

Mr. Chairman and members of the Committee:

I am honored and grateful for the invitation to testify before you today. I know I am not alone in wanting us to do all we can, consistent with the Constitution, to reduce the awful specter of rampant gun violence and the far too frequent massacres of our children, our friends, and our fellow citizens.

Like all decent Americans, I felt a pang of unspeakable horror on December 14, when I learned that twenty first-grade children had been brutally slaughtered in their first-grade classroom in Newtown, Connecticut. Those children, and the brave grown-ups who died at Adam Lanza's hands as they tried to save the young lives entrusted to their care, deserve every effort to translate our shared grief into shared national action. That action must not be deterred by the defeatist argument that, because we will never solve this problem in its entirety, we might as well give up. Nor should it be deterred by distorted interpretations of the United States Constitution. As others have often reminded us about that great and enduring document, it is many things to many people, but one thing it is *not* is a suicide pact.

^{*} Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School. The institutional affiliation is noted for identification purposes only.

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While we debate the pending proposals to reduce gun violence through measures focused on gun safety as part of a holistic national response, it's crucial that we not permit any part of our Constitution to become a collateral casualty of our conversation. Proposals to disarm the American people, to leave firearms solely in the hands of the military and the police, have been decisively taken off the table – if they were ever truly *on* the table – by the Supreme Court's Second Amendment decisions in 2008 and 2010. "Slippery slope" arguments predicated on the unsettled state of the law prior to 2008 have been rendered irrelevant. The only proposals under serious consideration in this body are reasonable measures that would fully respect the basic rights of responsible citizens to use ordinary firearms for self-defense and other lawful purposes. They cannot lead to unacceptably extreme measures as long as the Supreme Court sits.

Having examined those proposals, having looked at the steps announced by the President under his power faithfully to execute the laws of the United States, and having studied the decisions of the Supreme Court and lower courts around the country, I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution's structural limits either on congressional power or on executive authority.

Undoubtedly we should have a national debate about how best to reconcile the Second Amendment rights of every individual with the full range of proposals to reduce gun violence in America. As someone who has studied and taught constitutional law for four decades and argued dozens of cases in the Supreme Court and dozens more in the lower courts, I am obviously interested in engaging those questions. In today's testimony, however, I will focus not on

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competing theories of how the Second Amendment ought to have been interpreted but on the law as it stands. I am here not as an academic theorist but as a constitutional lawyer. As a lawyer, I've won some and I've lost some, and I know a losing argument when I see it. And the argument that any of the proposals to reduce gun violence currently being considered here might be struck down as unconstitutional is decidedly a losing argument.

There is plenty of room for policy debate over the best steps to take to reduce gun violence, but we mustn't confuse those policy differences or the ideological and cultural divisions that underlie them with genuine constitutional doubts about whether any of those steps crosses the constitutional line. Everyone in this room knows that anything Congress or the President does in this field will confront opposition. And in a nation as litigious as ours, some of that opposition will no doubt find its way into the courts. But there is no basis to suppose that the courts will or should rebuff any of the steps being debated here today. They should not, and they will not.

What I hope to do this morning, setting all hyperbole aside and approaching the law on the books with a fair-minded eye, is explain why reforms such as those this committee is considering clearly pass constitutional muster.

I. Introduction:

Taking the Second Amendment Seriously, But Applying it Cautiously

I begin by reaffirming my agreement with the Supreme Court that the Second Amendment guarantees Americans the right as individuals to possess guns for reasonable self-defense. Some of my friends and colleagues devoted to the cause of responsible firearms regulation evidently wish to relitigate this point. They continue to insist that the best reading of the Second Amendment would secure gun rights only in connection with service in the state militia and not for individual possession and use. For nearly a decade and a half, I have disagreed with them and have defended the individual rights view ultimately taken by the Supreme Court in 2008. In October of 1999, for example, I joined a fellow constitutional law scholar in publishing an op-ed in *The New York Times* arguing that “bearing arms [is] a ‘privilege’ of each citizen.”¹ I continue to defend this position today.

That matters only insofar as it bears on my credibility as a witness in today’s hearing. If I were among those who had *opposed* the individual rights interpretation adopted by the Supreme Court in *Heller*, some might wonder whether my conclusions about the regulations *Heller* permits Congress to adopt reflect wishful thinking rather than a realistic and sympathetic appraisal of what the Court that decided *Heller* would in fact permit. But there is no wishful thinking here. I am being a hard-headed realist in reading the *Heller* decision and extrapolating conclusions from the majority opinion.

¹ Laurence H. Tribe & Akhil Reed Amar, *Well Regulated Militias and More*, N.Y. TIMES, Oct. 28, 1999, at A25; 1 Laurence H. Tribe, *American Constitutional Law* 900–902 (3d ed. 2000).

Although many in the community advocating gun rights had long assumed that the individual rights interpretation governed the scope of the Second Amendment, it was not until the Supreme Court's 2008 ruling in *District of Columbia v. Heller*² that a majority of the Court's Justices agreed. In so doing, the Court recognized that the core individual liberty protected by the amendment affords Americans the right to purchase and store operable firearms for self-defense in the home. Two years later, in *McDonald v. City of Chicago*,³ the Court extended the *Heller* ruling to cover restrictions imposed by state and local governments, making it unmistakably clear that the right at issue was not and is not simply a right of the state-organized militia against being overrun by federal authority.

Despite this fundamental affirmation, the *Heller* decision is exceedingly narrow in many important respects. As Judge Brett Kavanaugh of the D.C. Circuit Court of Appeals recently put it, "It bears emphasis that *Heller*, while enormously significant jurisprudentially, was not revolutionary in terms of its immediate real-world effects on American gun regulation." "Indeed," he continued, "*Heller* largely preserved the status quo of gun regulation in the United States."⁴ To understand what he meant, it helps to look first to the Washington, DC ordinance implicated in the *Heller* case. The District had in place one of the most restrictive firearms regulations in the nation; it essentially outlawed the possession of handguns in the home, where the need for self-defense is, as Justice Scalia wrote, "most acute."⁵ For the majority on the Court, a policy like the one the District had adopted, a policy on the outer edge of gun control's reach in the United States, was irreconcilable with the Second Amendment.

² 554 U.S. 570 (2008).

³ 130 S.Ct. 3020 (2010).

⁴ *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

⁵ *Heller*, 544 U.S. at 628.

The *Heller* decision took great pains to emphasize its relative modesty. It repeated the mantra that the Second Amendment right “is not unlimited”⁶ and devoted an entire section to listing types of regulation – for example, limits on gun ownership “by felons and the mentally ill” and, most relevant to today’s hearing, regulation of “dangerous and unusual weapons” – the constitutionality of which the Court had no intention of casting into doubt.⁷ The decision paused to note that, by specifically giving a constitutional green light to some regulatory efforts, the Court did not mean to signal that others were constitutionally dubious.⁸ Justice Scalia closed his opinion for the Court with an expression of solicitude for the regulatory goals that Washington, DC sought to advance and, more importantly, an invitation to pursue those goals with the “variety of tools” still available to the District and to other states and localities across the country even in *Heller*’s wake.⁹

Since that decision and its extension to state and local laws in 2010, the vast majority of federal and state courts to adjudicate Second Amendment claims have responsibly hewed to the cautious approach espoused by the Supreme Court in *Heller* and *McDonald*. For example, in a ruling highly relevant to the topic of this hearing, the D.C. Circuit recently upheld the constitutionality of Washington D.C.’s assault weapons ban, which included a restriction on

⁶ *Id.* at 595, 626.

⁷ *Id.* at 626 – 28.

⁸ *Id.* at 627 n. 26. There is no doubt, for instance, that regulatory provisions targeting firearms and ammunitions *manufacturers* in addition to those who transfer, possess, carry, or use the resulting weapons are at least as easy to defend from Second Amendment challenge as are measures that do not take effect until the point of sale.

⁹ *Id.* at 636.

high-capacity magazines, as well as gun registration requirements.¹⁰ The majority in the case, following the broad consensus that has emerged among federal and state judges,¹¹ evaluated the regulations against a standard of heightened judicial scrutiny while preserving both the option to adopt a more skeptical mode of review for restrictions on core self-defense firearm possession and the option to exempt other laws from Second Amendment review entirely when they do not enter the amendment's zone of protected conduct.¹² In another notable decision staking out a similar approach, a panel of the Seventh Circuit Court of Appeals struck down Chicago's firing-range ban given the close nexus between regular firing practice and training and safe, responsible self-defense in the home.¹³ And state appellate courts from North Carolina to Wisconsin to California have joined with their federal brethren in upholding state restrictions on firearms ownership under this middle-of-the-road approach that molds the degree of judicial scrutiny to the extent of a law's burden on the core self-defense right secured by the Second Amendment.¹⁴

The central message of *Heller* and its lower-court progeny is thus to take the application of the Second Amendment seriously but also cautiously. When necessary to vindicate the core right to self-defense respected by *Heller*, neither courts nor lawmakers should be shy about invoking the Second Amendment. But because few public responsibilities are as important to

¹⁰ *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).

¹¹ *See, e.g.*, *Kachalsky v. County of Westchester*, 701 F.3d 81, 93 – 94 (2d Cir. 2012); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) cert. denied, 132 S. Ct. 1538 (U.S. 2012); *United States v. Masciandaro*, 638 F.3d 458, 469-70 (4th Cir. 2011) cert. denied, 132 S. Ct. 756 (U.S. 2011); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010);

¹² *Heller*, 670 F.3d at 1256 – 58.

¹³ The court applied what it called “not quite strict scrutiny” because the law's burden struck so close to the core Second Amendment right to self-defense in the home. *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

¹⁴ *See, e.g.*, *Johnston v. State*, 735 S.E.2d 859 (N.C. Ct. App. 2012); *State v. Brown*, 815 N.W.2d 407 (Ct. App. Wisc. 2012); *People v. Ellison*, 196 Cal. App. 4th 1342, 1347 (2011).

good governance as legislating to secure public safety, lawmakers and jurists should not casually give the amendment an expansive scope nor unduly scrutinize reasonable firearm regulations. In the wake of the Newtown massacre and the push to propose sensible new rules about firearms, the Obama administration and many leaders in Congress have conducted themselves precisely along these lines.

II. The Second Amendment Propriety of Recent Policy Proposals

Limits on Large-Capacity Magazines

A core feature of the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein, as well as the primary component of a freestanding bill championed by Senator Frank Lautenberg, is a ban on magazines capable of firing more than ten rounds of ammunition without reloading.¹⁵ Before moving into the weeds of the constitutional analysis, it would be useful to contrast such a high-capacity magazine restriction to the law *Heller* struck down. *Heller* axed a local ordinance that adopted about as blunt an approach to restraining gun violence as possible: By its very design, the DC law espoused disagreement with the whole idea of law-abiding gun ownership for self-defense in the home. A limit on large-capacity magazines, by contrast, is a regulation of an entirely different caliber. It does not challenge the fundamental recognition that gun possession for self-defense is a right of every citizen; it merely seeks to reset the parameters of responsible ownership to advance the cause of public safety. It operates with a scalpel rather than an ax. Even Robert Levy, the man who largely funded the challenge to DC's sweeping

¹⁵ The Assault Weapons Ban of 2013 also prohibits firearms with fixed magazines capable of holding more than ten rounds of ammunition.

handgun ban in *Heller* and served as an attorney on the case, concedes that bans on both high-capacity magazines and assault weapons almost certainly do not infringe the Second Amendment rights he successfully fought to vindicate in court.¹⁶

By any reasonable reckoning, this crucial measure might not even trigger heightened Second Amendment review at the threshold stage that the *Heller* ruling requires courts to undertake. But even if the high-capacity magazine prohibition does require further analysis, it safely falls within a zone of regulations that do not unconstitutionally abridge Second Amendment rights.

Most constitutional challenges require lawyers and scholars to carry out two stages of analysis. First, we must assess whether a given government policy even *implicates* a given right in the first place. For example, in 1915, the Supreme Court entertained a First Amendment challenge to a filmmaker's punishment under an Ohio censorship law but, in a clear misjudgment the Court would later correct, decided that movies were not even a form of "speech" entitled to First Amendment protection.¹⁷ More recently, in a ruling that may perhaps give pause to members of this committee (despite the distinct protections of the Constitution's Speech and Debate Clause), the Court concluded that votes by legislators are not a form of "speech" over which any public official can claim a personal First Amendment right.¹⁸ Assuming that a law *does* implicate the right in question, the government must then proceed to justify the challenged

¹⁶ Interview with Robert A. Levy by the Washington Post (Jan. 10, 2013), *transcript available at* http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630_1_assault-weapons-high-capacity-magazines-military-style-guns.

¹⁷ *Mut. Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 243 (1915).

¹⁸ *Nevada Comm'n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2350 (2011).

law so that the court hearing the challenge may evaluate, roughly speaking, whether the justification is strong enough to permit the law to stand or, alternatively, whether the measure goes too far and thus violates the Constitution.

I begin with this return to fundamentals because it never ceases to surprise me how often those engaged in legal debate talk past one another by conflating these distinct steps. In the Second Amendment context particularly, there is no excuse for making that mistake. For *Heller* itself makes it absolutely plain that not every gun regulation even triggers Second Amendment review. In other words, sometimes governments may enact regulations addressing the manufacture, transfer, possession or use of firearms that categorically fall outside the Second Amendment's scope, freeing governments of any burden even to make detailed defenses of the provisions in question. For example, the *Heller* opinion specifically named "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" as illustrative examples of regulations that should not even receive further constitutional review.¹⁹ The importance of this point should not be underemphasized. If too many entirely reasonable firearm regulations, like assault weapon bans and background checks, or rules about trafficking and straw purchases, are subjected to heightened Second Amendment review, it will become difficult if not impossible to separate those regulations categorically from the restrictions that *Heller* specifically approved without subjecting them to any "scrutiny" at all.

¹⁹ Dist. of Columbia v. Heller, 554 U.S. 570, 626 - 27 (2008).

Beyond the examples appearing in the decision, *Heller* also identifies the three primary factors to consider in judging whether other types of regulation trip the Second Amendment's alarm. First, the Court carefully frames the scope of the Second Amendment to cover *only* firearms "in common use at the time."²⁰

Second, *Heller* recognized that "dangerous or unusual" weapons may be and have historically been heavily regulated or banned.²¹ It is not inconceivable – indeed, it seems quite likely – that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind. At the very least, the *Heller* majority recognized that the government could keep machine guns —"M-16 rifles and the like"—out of the hands of civilians.²² The Supreme Court thus emphatically rejected the extravagant, or as Justice Scalia characterized it, "startling" notion, still promoted by some, that the Second Amendment could fulfill its original purposes only if citizens were guaranteed a right to arm themselves to the teeth, matching in their private armories essentially the full array of weapons possessed by the United States Military.²³

Third and finally, the Court emphasized the importance of a nexus to core self-defense needs.²⁴ The majority in *Heller* had no trouble recognizing that handguns represented the

²⁰ *Id.* at 627.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 624.

²⁴ *Id.* at 599 ("Justice Breyer's assertion that individual self-defense is merely a 'subsidiary interest' of the right to keep and bear arms . . . is profoundly mistaken. He bases that assertion

“quintessential self-defense weapon,” particularly in the home.²⁵ Moreover, handguns were not categorically more dangerous than other types of firearms. So Washington D.C.’s handgun ban clearly fell within the scope of the Second Amendment.

The clarity of *Heller*’s guidance on how to apply these threshold factors begins to dissipate, however, when they no longer align so strikingly in one direction. To begin with, the Court left “dangerousness” undefined, and what the Court meant by that term is not entirely self-evident. In an obvious sense, *all* firearms are dangerous; that is what makes them effective instruments of self-defense. The *Heller* ruling, therefore, asks us to balance any *exceptional* dangerousness of particular firearm design features against the potential self-defense value of those features. For example, even if home possession of machine guns for self-defense might, on rare occasion, deter criminal trespassers more than home possession of handguns, that benefit is simply not sufficient to overcome the substantial hazards to innocent bystanders and intentional targets, in particular the police. *Heller* obviously does not contemplate asking the government to provide an intricately reasoned justification for banning machine guns; instead, it recognizes – and it surely authorizes Congress, and indeed all of us, to recognize – excessive dangerousness in the inherent design of the weapon²⁶ so as to cut off Second Amendment review at the threshold.

solely upon the prologue—but that can only show that self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” (emphasis in original).

²⁵ *Heller*, 544 U.S. at 629.

²⁶ Throughout this debate, opponents of restrictions on large-capacity magazines have repeatedly demanded empirical evidence showing a link between magazine capacity and gun violence. Studies in that mold certainly exist, and I discuss them later. *See, e.g.*, text accompanying notes 48 – 50. But at this threshold stage of the Second Amendment inquiry, the *Heller* decision’s meaning of dangerousness cannot be equivalent to an empirically demonstrated effect on public safety. Rather, the standard is one that asks us to examine design features to assess whether the

All things considered, I conclude that reasonably restricting magazine size and availability does not implicate the core Second Amendment right as *Heller* conceived of it. The reason is not the first factor, that of “common use,” because, of course, large-capacity ammunition magazines and the firearms outfitted for them are, by any reasonable measure, in quite common use in the United States. I note here just a few examples. The standard Glock pistol, the firearm that one reporter called “America’s handgun” in a recent book on the subject, comes equipped with a seventeen-round magazine.²⁷ And America’s most popular rifle, the AR-15 model,²⁸ typically comes with a thirty-round magazine and can accommodate magazines with even larger capacities.²⁹

But to contend that the sizeable market presence of a particular firearm feature is sufficient in itself to trigger full Second Amendment scrutiny is to misrepresent the lesson of *Heller*. The relative dangerousness and self-defense-serving capacity of a firearm or design

weapon poses an aggravated threat to safety as a common-sense matter. First, if the former were the meaning of dangerousness, the threshold inquiry, which may lead courts to conclude that the Second Amendment does not even apply, would become indistinguishable from the more advanced stage of review, in which courts scrutinize a government’s public safety rationale. Second, making empirical evidence of salutary public-safety impacts a prerequisite to gun regulation would defeat efforts to respond to new technologies and lethal features that pose a substantial threat to public safety. The Second Amendment does not require that Americans afford the gun industry a “wait and see” grace period on the (in)famous theory that even a vicious dog deserves one free bite.

²⁷ Erin McCarthy, *Why the Glock Became America’s Handgun*, POPULAR MECHANICS (Jan. 12, 2012, 6:30 AM), <http://www.popularmechanics.com/technology/military/weapons/why-the-glock-became-americas-handgun>

²⁸ Erica Goode, *Rifle Used in Killings, America’s Most Popular, Highlights Regulation Debate*, N.Y. TIMES (Dec. 16, 2012), <http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all>.

²⁹ Steven Almasy, *Newton Shooter’s Guns: What We Know*, CNN (Dec. 19, 2012, 10:11 AM), <http://www.cnn.com/2012/12/18/us/connecticut-lanza-guns/index.html>.

feature are also crucial considerations. This approach makes complete sense. The common use and possession of a given firearm feature is, at best, just one helpful indicator of whether restricting that feature will stymie or frustrate the exercise of the core Second Amendment protection of lawful self-defense to a constitutionally cognizable degree. For instance, in the case of high-capacity magazines, significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense. Analysis of the modern development of the U.S. gun market demonstrates that the firearms industry, driven by an obvious profit motive, ushered in a revolution in the state of the market during the 1980s. Manufacturers began to roll out increasing numbers of pistols with ever-larger-capacity magazines rather than revolvers, which take just six rounds of ammunition and had traditionally been the most popular firearm for personal self-defense.³⁰ The frequent purchase of such large-capacity magazines, then, may not be attributable purely or even primarily to actual gun-owner preferences, much less to gun-owner needs. Rather, guns equipped with or ready for large-capacity magazines may simply be the weapons most readily made available on the market. And even if this market presence begins to influence more Americans to purchase firearms with high-capacity magazines because they fear attacks from criminals possessing guns outfitted with the same high-capacity magazines, nothing in *Heller* suggests that it is improper for the government to halt the escalation of this arms race in its tracks. The one-way ratchet of ever more powerful firearms is not a constitutional inevitability. For unlike the doctrine of mutually assured destruction that some say maintained an uneasy peace during the nuclear arms buildup of the

³⁰ See DC Reedy & CS Koper, *Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers*, 9 INJURY PREVENTION 151, 151 (2002), available at <http://injuryprevention.bmj.com/content/9/2/151.full#aff-1>.

VIOLENCE POLICY CENTER, BACKGROUNDER ON GLOCK 19 PISTOL AND AMMUNITION MAGAZINES USED IN ATTACK ON REPRESENTATIVE GABRIELLE GIFFORDS AND OTHERS 1 (2011), available at www.vpc.org/fact_sht/AZbackgrounder.pdf.

Cold War, the propagation of increasingly dangerous guns on American streets has already taken an all-too-violent toll. In other words, tempering the trend toward more dangerous weapons actually *vindicates* the core Second Amendment right of self-defense and personal safety that *Heller* recognizes. In this context, as in many others, less is more.

But even looking beyond the market saturation of large-capacity magazines, this feature runs headlong into the other threshold obstacles that *Heller* requires Second Amendment claims to clear. As experts in effective firearms regulation have preached for years and particularly fervently in recent weeks, higher-capacity magazines pose greater dangers to public safety. By permitting shooters using semi-automatic weapons to continue firing more bullets without interruption, these magazines increase the potential lethality of armed killers.³¹ Though well-trained gun users can change magazines quickly, this interruption may, as we saw last year in the Arizona shooting of Rep. Gabby Giffords, afford time for heroic men or women to intervene and disarm the shooter.³² Moreover, this interruption gives our police a chance to return fire.³³ And it may even provide time for reflection and rethinking before murder becomes massacre.

³¹ BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, ASSAULT-STYLE WEAPONS: HIGH-CAPACITY MAGAZINES, <http://www.bradycampaign.org/legislation/msassaultweapons/highcapacity> (last visited Feb. 2, 2013).

³² Ken Dolak & Justin Wealer, *Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, ABC NEWS (Jan. 9, 2011), <http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman-reloading/story?id=12577933>.

³³ I believe I can speak for many Americans when I thank Baltimore County Police Chief Jim Johnson for the illuminating insights he has publicly offered on the threats of high-capacity weapons not just to public safety in general but also law enforcement officer safety more specifically. See, e.g., John Quinones, *Baltimore Police Chief Wants to Ban High-Capacity Firepower*, ABC NEWS (Dec. 20, 2012), <http://abcnews.go.com/US/baltimore-police-chief-ban-high-capacity-firepower/story?id=18030163>

Against the evident dangerousness of high-capacity magazines as a design feature, we must evaluate the strength and plausibility of asserted self-defense interests. Critics of recent proposals to reestablish a limit on high-capacity magazines have argued that firing more than ten rounds without changing a magazine is necessary for effective self-defense. While I have no doubt that subscription to this perspective among some law-abiding gun owners is sincere, I doubt that it is well-founded. It's rhetorically effective to ask, "How many bullets do *you* want in your magazine when an intruder breaks into your home?" But the answer tells us little that is of relevance to the Second Amendment as *Heller* conceives that provision. I might want a magazine with twice as many bullets as any possible home intruder; I might want a machine gun too. But in the end that can't be the measure of what the Second Amendment says I have a *right* to own and deploy.

Despite the emotional resonance of this kind of appeal, incidents like burglaries and home invasions – even when they lead to the exchange of fire – are unlikely to *require* firing many shots. The NRA publishes a regular column featuring newspaper clippings of gun owners protecting themselves against intruder attacks, and an analysis of these reports over a five-year period demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was also about two.³⁴ Of course, this data comes from the episodes the NRA chooses to report, so selection bias is possible, meaning the

³⁴ Claude Verner performed the analysis of reporting over the period 1997 to 2001. The findings further show that when many shots were fired, a (presumably frightened) gun owner finished an entire magazine rather than firing the number of shots that necessarily had to be fired in light of the scenario. The analysis can be found reprinted with the author's permission at *Analysis of Five Years of Armed Encounters (With Data Tables)*, GunsSaveLives.net (March 12, 2012), <http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/>.

average number of shots fired per incident could be even lower.³⁵ Even police officers traditionally found revolvers with six-bullet magazines sufficient for their own safety until more dangerous guns flooded the market.³⁶ And we should not lose track of the bigger picture: studies show that self-defense in the home with firearms is rare.³⁷ Additionally, firearms accidents are all too common: between 1965 and 2000, unintentional shootings accounted for the deaths of over 60,000 Americans.³⁸ Firing more bullets quickly may compound their damage.

Another version of the critics' response is that in scary situations, like home invasions, gun owners may go through bullets too quickly in a fit of nervousness or panic.³⁹ That may be true, but it also aggravates the downside hazard in cases of error,⁴⁰ so it is not at all clear that increased access to large-capacity magazines for shooters subject to fragile nerves represents a

³⁵ It seems likely, for example, that merely brandishing a weapon may often lead intruders to flee. A non-exhaustive review of the NRA column reveals several examples of exactly this scenario, giving me the impression that the NRA's reporting is not demonstrably biased toward extreme scenarios or even those in which some shots are fired. *See, e.g.*, Armed Citizen, NRA (March 2012), <http://www.nrapublications.org/index.php/12492/armed-citizen-23/> (“[The resident] met the intruder at her bedroom door, pointed the gun at him and demanded he leave. The trespasser fled without hesitation.”).

³⁶ *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1489 (2009).

³⁷ A study of Atlanta police records, for example, found that victims of burglaries used guns in self-defense just 3% of the time. For a description of the study and a rich discussion of self-defense uses for firearms, *see* DAVID HEMENWAY, *PRIVATE GUNS, PUBLIC HEALTH* 67 (2004). The study is A.L. Kellermann et al., *Weapon involvement in home invasion crises*, 273 J. OF THE AM. MED. ASSOC. 1759 (1995).

³⁸ HEMENWAY, *supra* note 38, at 27 – 35.

³⁹ *See, e.g.*, *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); Emily Miller, *The High Capacity Magazine Myth*, WASHINGTON TIMES (Jan. 27, 2013), <http://www.washingtontimes.com/news/2013/jan/27/the-high-capacity-magazine-myth/>; Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, REASON (Jan. 16, 2013), <http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits>.

⁴⁰ *Heller*, 670 F.3d at 1263 - 64 (“[T]he tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.” (internal quotations omitted)).

net gain for home security or public safety. Finally, some critics of magazine-capacity limits have pointed out that, realistically, many gun owners have not received proper training and for that reason, may fire bullets indiscriminately; a larger magazine – so the thinking presumably goes – will increase the chances that at least one of their wayward shots will hit its mark.⁴¹ As the Supreme Court recognized in *Heller*, however, the Second Amendment protects only the right of “*responsible* citizens to use arms in defense of hearth and home.”⁴² In other words, a dangerous firearms feature otherwise outside the Second Amendment’s scope cannot become subject to heightened constitutional scrutiny because of the shortcomings of *irresponsible* gun owners.

To be sure, *some* gun owners may struggle to change magazines quickly not for lack of adequate training but rather by reason of disability or old age.⁴³ Perhaps a ban on high-capacity magazines without any exception for the disabled or elderly might, for this reason, trigger heightened scrutiny of such a ban as applied specifically to those individuals. But the possibility that a prohibition could raise constitutional questions in some subset of its applications does not mean that the prohibition is constitutionally vulnerable on its face.⁴⁴ And it remains the case that

⁴¹ See, e.g., Stephen Hunder, *Why 33 rounds makes sense in a defensive weapon*, WASHINGTON POST (Feb. 6, 2011),

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/04/AR2011020407083.html>

⁴² *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (emphasis added).

⁴³ Yih Chau-Chang, *High-Capacity Magazines And Their Critical Role In Lawful Self-Defense*, THE EXAMINER (March 10, 2011), <http://www.examiner.com/article/high-capacity-magazines-and-their-critical-role-lawful-self-defense>

⁴⁴ The Supreme Court has exhibited an extreme reluctance to strike down laws on their face – meaning in all applications – when only some applications would fall afoul of a constitutional provision (with the exception of the First Amendment, as facially overbroad laws may chill protected free speech). See RICHARD H. FALLON, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 162, 168 (6th ed. 2009).

large-capacity magazines are highly unlikely to be necessary to self-defense in the vast majority of home invasions or burglaries, even those that resort to the exchange of fire. The facial validity of a high-capacity magazine ban is therefore clear.

Despite the considerable market presence of high-capacity magazines, the danger they pose to public safety and the weakness of the self-defense justification for their possession means that two of the three threshold *Heller* factors point strongly against extending Second Amendment protection to high-capacity magazines. The D.C. Circuit Court of Appeals, in a case challenging Washington D.C.'s restriction on magazines with more than ten rounds, recently struggled with this first stage of analysis and determined that the court did not have before it sufficient evidence to decide whether the Second Amendment even *reached* large-capacity magazines.⁴⁵ However, the court went on to conclude that, even if it was proper to extend coverage of the amendment to large-capacity magazines, the government's interest in banning them was strong enough to do so without violating Second Amendment rights.⁴⁶

Having now reviewed the best evidence and argumentation advanced by defenders of high-capacity magazine possession, I doubt that the Supreme Court would find it necessary to reach that second stage of review in dealing with a ban on high-capacity magazines and am quite confident that, in any event, the Court would agree with the ultimate conclusion that, even if the amendment applies, a ban on high-capacity magazines withstands Second Amendment scrutiny.

⁴⁵ *Heller*, 670 F.3d at 1261.

⁴⁶ *Id.* at 1263 – 64.

In explaining that conclusion, I emphasize that commonly advanced rejections of a legitimate government interest in banning high-capacity magazines are deeply misleading. Many opponents of reasonable firearms regulation insist that we tried banning large-capacity magazines in 1994: the results are in, they say, and we failed. One favorite trope is to cite to a 1997 Department of Justice study, which, according to the recent testimony of Wayne LaPierre, “proved that [the] ban had no impact on lowering crime.”⁴⁷ But no one is even *arguing* that a ban on high-capacity magazines (or on assault weapons, for that matter) will necessarily decrease crime rates; highly lethal firearms will still be widely available on the market, and some criminals will use them, just as they do now.

What defenders of a ban on high-capacity magazines *do* argue is that such a ban will help prevent these criminals from killing or maiming as many people when they commit violent crimes. And that argument is solidly grounded. One study, for example, found that between 1984 and 1993, criminals using guns with high-capacity magazines or assault weapons as defined by the 1994 Assault Weapons Ban killed or injured an average of 29 victims, compared to the average 13 victims shot by criminals unequipped with large-capacity magazines.⁴⁸ Another study suggests that, since the lapse of the ban in 2004, high-capacity magazines have once again

⁴⁷ See, e.g., *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (prepared testimony of Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association).

⁴⁸ This study considered all “mass shooting” incidents: those in which six or more were killed or twelve or more were wounded. For an explanation of this study, see Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban*, in *REDUCING GUN VIOLENCE IN AMERICA* 167 (Daniel W. Webster & Jon S. Vernick, eds., 2013). The study is Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. OF QUANTITATIVE CRIMINOLOGY 33 (2001).

become common in episodes of violent crime after the beginnings of a decline, which probably took place because the black market for these magazines had begun to dry up.⁴⁹

Even more misleading is the suggestion that in 1997 we could (or even today that we can) draw meaningful conclusions from the absence of unmistakable evidence of a decrease in violence following the 1994 ban. That legislation grandfathered or exempted many thousands of weapons already owned, and those could still be sold or transferred.⁵⁰ In other words, the 1994 ban was crafted with long-term effects in mind; to measure its effects notwithstanding its untimely end is to misunderstand fundamentally how the legislation was designed to work. It is therefore all the more telling that supporters of reasonable regulation can cite studies based upon identifiable trends emerging during the latter years of the ban, as well as evidence from both before and after the ban, showing that the legal availability of large-capacity magazines is indeed correlated with increased deaths and injuries caused by gun violence. Considered alongside the dangerousness inherent in a large-capacity magazine as a design feature, this evidence provides the government with a sufficient basis to satisfy the Second Amendment under any plausible understanding of the Supreme Court's jurisprudence surrounding that amendment.

⁴⁹ See David S. Fallis and James V. Grimaldi, *Va. data show drop in criminal firepower during assault gun ban*, WASH. POST (Jan. 23, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html> (finding that in Richmond, Virginia, the percentage of guns with high-capacity magazines seized from criminals by police fell to a low of 10% by 2004, when the federal assault weapons ban expired, but has since rebounded to 22%).

⁵⁰ Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 165 – 66.

Assault Weapons Ban

By many accounts, the most important component of the newly proposed assault weapons ban is its prohibition on high-capacity magazines.⁵¹ But that does not mean that the remaining features of the proposal stand on weaker constitutional ground. Far from it. Application of *Heller*'s three threshold factors – dangerousness, commonness of use, and connection to core self-defense interests – demonstrates that the Second Amendment does not provide legal shelter to the features that trigger a firearm's prohibition under the ban.

Opponents of the legislation as well as some proponents of new firearms regulation have observed that some of the “military characteristics” that can lead to prohibition under the legislation⁵² (and, by some accounts, under assault weapons bans in general⁵³) are mostly cosmetic traits designed to make a gun *appear* dangerous and are not, in fact, intrinsically hazardous. But Congress would surely be acting within its constitutional authority if it were to reject this characterization as self-serving or otherwise unreliable. For example, the Brady Campaign to Prevent Gun Violence insists that “[p]istol grips . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position [and that] [b]arrel

⁵¹ Tom Diaz, a researcher for the Violence Policy Center, has repeatedly called on lawmakers to focus their attention on a high-capacity magazine ban. *E.g.*, Tom Diaz, *Ten Ways to Spot a Sell-Out on Gun Control*, FAIRLY CIVIL (Jan. 14, 2013, 2:26 PM),

<http://tomdiazgunsandgangs.com/2013/01/14/ten-ways-to-spot-a-sell-out-on-gun-control/> (“An effective law will focus on one prime feature—the ability to accept a high-capacity magazine.”).

⁵² *See, e.g.*, *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (statement by Sen. Ted Cruz) (“Now, what the assault weapons ban instead targets are cosmetic features.”).

⁵³ *See, e.g.*, Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1295 (2009).

shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession.”⁵⁴ Moreover, even if the characterization of these features as cosmetic were accurate, it would make little difference as a constitutional matter. In a recent televised interview, Justice Scalia explained the basis in history for exempting certain types of regulations from Second Amendment review. Certain limitations on gun ownership are constitutionally permissible, he contended, “because there were some [regulations] that were acknowledged at the time [of the Founding]. For example, there was a tort called affrighting . . . if you carried around a really horrible weapon just to scare people, like a head ax or something. . . .”⁵⁵ What the Justice evidently meant was that regulating weapons because they are chosen specifically for their intimidating appearance is constitutionally unproblematic because the very use of intimidation is unnecessarily disruptive to organized society.⁵⁶

Even more important to the constitutionality of the assault weapons ban is the absence of any connection to the core Second Amendment right to defend oneself with a firearm. At this committee’s hearing on January 30, several witnesses criticized the assault weapons ban on policy grounds, but in my role as a constitutional lawyer listening intently for arguments relevant to the proposal’s Second Amendment propriety, I was struck by the failure of anyone’s

⁵⁴ Brady Campaign to Prevent Gun Violence, The Top 10 NRA Myths About Assault Weapons, <http://www.bradycampaign.org/issues/assaultweapons/nramyths/>.

⁵⁵ Interview with Justice Antonin Scalia by Chris Wallace, FOX NEWS SUNDAY (July 29, 2012), transcript available at <http://www.foxnews.com/on-air/fox-news-sunday/2012/07/29/justice-antonin-scalia-issues-facing-scotus-and-country#p/v/1760654457001>.

⁵⁶ Justice Scalia’s point about the tort of affrighting surfaces in the *Heller* decision itself: the majority opinion cited three illustrative examples of state courts entertaining such actions in the nineteenth century. See *Dist. of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (citing, e.g., *State v. Lanier*, 71 N.C. 288, 289 (1874) (“The elementary writers say that the offence of going armed with dangerous or unusual weapons is a crime against the public peace by terrifying the good people of the land, and this Court has declared the same. . . .”)).

testimony to support these features as essential to self-defense. In fact, I have searched in vain for any reasoned arguments that pistol grips, forward grips, telescoping stocks, grenade or rocket launchers, and barrel shrouds are indispensable or even contribute to self-defense.

Finally, it is relevant to ask how many assault weapons Americans currently own. Data is hard to come by in large part because firearms manufacturers refuse to release data tracking their sales.⁵⁷ What we do know is that the number of weapons that would qualify under either the proposed ban's so-called "characteristics test" or its explicit list of banned models is smaller than the number of guns with standard-issue high-capacity magazines.⁵⁸ One reporter's painstaking analysis estimated that there are 3.75 million AR-15-style rifles owned in the U.S. today, and AR-15s are the most popular although not the exclusive type of qualifying assault weapon.⁵⁹ The NRA's lobbying arm estimates that, depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S.⁶⁰ Given that the Congressional Research Service recently found that, as of 2009, Americans own about 310 million guns,⁶¹ the NRA's estimate would translate into approximately 7 million assault weapons owned today. Although 7 million is hardly a negligible figure, it still corresponds to quite a small portion of the

⁵⁷ Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government To Buy Them Back?*, SLATE (Dec. 20, 2012), http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

⁵⁸ See Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 161 (explaining that the universe of large-capacity magazine equipped firearms is broader than the universe of weapons satisfying the criteria for categorization as an assault weapon).

⁵⁹ Peters, *supra* note 58.

⁶⁰ *Top Ten Frequently Asked Questions*, NRA-ILA, <http://www.gunbanfacts.com/FAQ.aspx> (last visited February 2, 2013).

⁶¹ WILLIAM J. KROUSE, CONG. RES. SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012).

overall gun market – hardly enough to justify calling such weapons “common” within the meaning of *Heller*.

But for the purposes of constitutional analysis, debating how to characterize the significance of assault weapons’ market presence would be a waste of time. To make a difference to *Heller*’s threshold inquiry, which must take notice of the complete lack of any connection of assault-weapon features to self-defense as well as these features’ dangerousness in both fact and appearance, the market presence of assault weapons would have to be overwhelmingly large (and even then, I doubt seriously the bottom line would change as a constitutional matter). And overwhelmingly large it assuredly is not.

Universal Registration and Background Checks

All responsible participants in the gun safety debate agree that some groups of people simply should not be allowed to own, keep, or carry guns. Those groups include children, dangerous felons, and those with serious mental illnesses that preclude safe gun ownership. When some observers casually compare the Second Amendment to the First, they forget this essential difference: Although freedom of speech sometimes comes at a price, and although speech can at times pose dangers, our constitutional system addresses those dangers by permitting government to impose carefully crafted limits on speech, not by limiting or licensing eligible speakers. The Constitution’s strategy with respect to guns is entirely different. It addresses the dangers of guns in the wrong hands by permitting government to keep them out of

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those hands in the first place, and, of course, by permitting government to regulate where and under what conditions people can bear those weapons in possible confrontation with others.

Accordingly, this Congress might be called upon to consider measures designed to minimize the risk that guns fall into the hands of such prohibited purchasers and owners. Measures dealing with straw purchases and trafficking are obviously important in that effort and are clearly constitutional. Rather than spending the committee's time on those measures, I will focus here on provisions that mandate universal registration requirements or a universal background check, closing the many notorious loopholes that characterize current laws on the subject. There is no serious doubt that requiring universal registration or a universal background check would comply with the Second Amendment.

It is important to recognize, at the outset, that prohibiting particular groups of people from owning or possessing guns is fully compatible with the Second Amendment. In the first place, such prohibitions are consistent with the original and traditional understanding of the Second Amendment. It was widely accepted at the time of the framing that not every person had a right to keep and bear arms; instead, the right was closely tied to the notion of responsible citizenship, and it has long been denied to criminals and others whose possession of guns would pose a severe danger to the public.⁶² On this point, precedent aligns closely with history. The Supreme Court said in *District of Columbia v. Heller*: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

⁶² See *United States v. Rene E.*, 583 F.3d 8, 15–16 (1st Cir. 2009).

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mentally ill ...”⁶³ The Court fortified this conclusion in *McDonald v. City of Chicago*, when it added: “We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill’ ... We repeat those assurances here.”⁶⁴

Once the constitutionality of prohibiting gun possession by some people is accepted, the constitutionality of a reasonable system of registration or background checks follows automatically. The most powerful argument for this inference is not a technical legal point; it is, instead, common sense. And, although it shouldn’t be necessary to cite authority for the point, it’s worth noting that as eminent an authority as Alexander Hamilton wrote in *The Federalist* that “[t]he rules of legal interpretation are rules of *common sense*,” and that the “true test” of a “just application” of these rules is whether the resulting interpretation is “consistent with reason and common sense.”⁶⁵

Consider, then, whether the Constitution would be “consistent with reason and common sense” if it allowed prohibitions on firearms purchases by felons but disallowed background checks to determine whether a felon was the would-be purchaser of a firearm. As a matter of common sense, we all know that guns do not of their own accord stay out of the hands of prohibited purchasers. Nor are prohibited purchasers likely to confess their legal inability to buy guns when talking to gun dealers. The prohibitions, in short, do not enforce themselves. In order to be effective, in order to be meaningful, in order to be anything more than rules on paper, they

⁶³ 554 U.S. 570, 626 (2008).

⁶⁴ 130 S. Ct. 3020, 3047 (2010) (plurality opinion).

⁶⁵ *The Federalist* No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must be comprehensive and must be carried into operation by the government. It contradicts common sense—it ignores the fact that “the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men”⁶⁶—to say on the one hand that prohibiting felons from owning guns is constitutional, but to insist on the other hand that the background checks that seek to make those prohibitions effective are unconstitutional.

The Supreme Court’s decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* confirm the constitutionality of reasonable background check requirements. *Heller* expressly affirms that the Court was not calling into doubt “laws imposing conditions and qualifications on the commercial sale of arms.”⁶⁷ The *McDonald* Court “repeat[ed] those assurances,” observing that its holding “does not imperil every law regulating firearms.”⁶⁸ The universal registration requirement or background check is simply a “condition[]” on the transfer of arms; it is therefore expressly within the zone of permissible regulation identified by *Heller* and *McDonald*.

Analogous Supreme Court doctrine points in the same direction. The right to vote, like the right to keep and bear arms, is a fundamental right of Americans.⁶⁹ But no serious legal scholar doubts that before letting a citizen cast his ballot, the government may require the citizen to register and may take steps to check whether he or she really is an eligible voter. And the

⁶⁶ *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (opinion of Roberts, C.J.) (quoting *South Carolina v. United States*, 199 U.S. 437, 449 (1905)).

⁶⁷ 554 U.S. at 626–27.

⁶⁸ 130 S. Ct. at 3047 (plurality opinion).

⁶⁹ Compare *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (holding that the right to vote is fundamental), with *McDonald v. City of Chicago*, 130 S. Ct. 2020 (2010) (holding that the right to keep and bear arms is fundamental).

Supreme Court agrees; in *Crawford v. Marion County Election Board*, for example, it concluded that Indiana’s voter ID law was a permissible means of ensuring that only eligible voters participate in an election.⁷⁰ Checking whether a voter is eligible before giving that voter a ballot is comparable to checking whether a purchaser is eligible before letting her acquire a gun. Just as the former is constitutional, so is the latter. And the argument is of course even stronger in the instance of firearms. For, unlike a ballot in the hands of an ineligible voter, which might in the end prove to make no difference to who wins or loses the election at issue, a gun in the hands of even one ineligible owner poses a deadly danger all by itself.

History reinforces common sense and case law in this regard. The Supreme Court in *Heller* and *McDonald* stressed the role of history in interpreting the scope of the Second Amendment; “longstanding” prohibitions upon gun ownership, the Court indicated, are presumptively exempt from Second Amendment scrutiny.⁷¹ Lower courts have likewise noted that history plays an important, though not exclusive, role in determining the scope of permissible regulation under the Second Amendment.⁷² Measures to keep guns out of the hands of prohibited owners – owners who could not safely be entrusted with control of a lethal weapon – have a strong historical pedigree. For example, many states have longstanding laws—sometimes, laws dating back a century or more—requiring sellers to keep registers of all firearm purchasers; the registers had to be open to peace officers.⁷³ The government could use thus use

⁷⁰ 553 U.S. 181 (2008) (plurality opinion).

⁷¹ See 554 U.S. at 626–27; 130 S. Ct. at 3047 (plurality opinion).

⁷² See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010).

⁷³ See *Heller*, 670 F.3d at 1253–54.

these registers to determine whether any of the purchasers had obtained weapons in violation of the law.

To be sure, modern computerized background checks differ from the more cumbersome historical enforcement measures known to history. But “a constitution [is] intended to endure for ages to come.”⁷⁴ Just as the Second Amendment covers modern weapons, like handguns, that did not exist when the Bill of Rights was ratified in 1791, so too does it cover modern enforcement measures, like mandatory computerized background checks, that could not have been anticipated in 1791. Reasonable background checks fit into the long historical tradition to which registration requirements belong, and that is enough to sustain them without further ado under the tests established by the Supreme Court in *Heller* and *McDonald*.

In short, all relevant legal considerations—logic and common sense, directly applicable precedent, analogies to surrounding legal doctrines, and history and tradition—point to the same conclusion. The Second Amendment does not prohibit Congress from passing laws to carry into effect concededly constitutional prohibitions on firearm purchases. The universal background check, in particular, easily passes constitutional muster as a permissible regulation of the transfer of firearms.

This is not to say that all conceivable background check systems would comport with the Constitution. Suppose, for example, that Congress were to pass a law requiring handgun purchasers to undergo an extensive check on the purchasers themselves and all their family

⁷⁴ *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).

members and housemates, a check that took years to complete. Such a scheme would plainly impose a very severe burden on the right to keep and bear arms for self-defense. The burden would be entirely disproportionate to the objective the government is seeking to pursue. Where a background check is taken to such lengths that it effectively destroys the right to keep and bear arms, rather than ensuring that the right is enjoyed only by those constitutionally entitled to it, the government has overstepped the lawful boundaries of its power.

Such concerns are entirely out of place here, however. Whether a particular background check scheme that Congress adopts would go too far obviously depends on the specific details of that scheme. But none of the proposals seriously under consideration at the present come remotely close to overstepping constitutional boundaries. The proposed background check frameworks, especially those that rely on checks conducted instantaneously through the National Instant Background Check System, impose a constitutionally insignificant burden upon law-abiding citizens. Indeed, an instant background check is much *less* onerous than the Voter ID law that the Supreme Court upheld in *Crawford v. Marion County Election Board*; it is also much less cumbersome than longstanding registration requirements and other conditions on sale⁷⁵ that are concededly constitutional. Ultimately, therefore, I see no merit to the constitutional objections to the background check proposals presently being seriously considered by Congress.

III. The Consistency of the President's Measures with the Separation of Powers

⁷⁵ See *Heller*, 670 F.3d at 1253.

This January, President Obama announced twenty-three steps that his Administration would take to prevent gun violence.⁷⁶ The President has begun to implement these steps by using the executive powers vested in him by the Constitution and laws of the United States. Because the President adopted these measures by executive action, without specific congressional involvement, some have concluded that the President violated the separation of powers established by the Constitution. This claim is legally untenable; the President is acting well within his powers as head of the executive branch.

Some of the President's measures involve nothing beyond communicating with members of the public. Measure 23, for example, is to "[l]aunch a national dialogue ... on mental health." There is plainly no constitutional problem with executive steps of this sort. The President obviously does not need congressional permission every time he decides to give a speech or publish a press release.

Another category of measures—and this covers the great majority of the actions that the President has committed to take—includes steps that will improve the enforcement of federal laws already on the books. Thus, the President has agreed to "[m]aximize enforcement efforts to prevent gun violence and prosecute gun crime."⁷⁷ He has likewise decided "to require federal law enforcement to trace guns recovered in criminal investigations."⁷⁸ These improvements to

⁷⁶ See, e.g., Colleen Curtis, *President Obama Announces New Measures to Prevent Gun Violence*, Jan. 16, 2013, available at <http://www.whitehouse.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

⁷⁷ Measure 13.

⁷⁸ Measure 9.

federal law enforcement efforts plainly fall within the President's constitutional power—and constitutional responsibility—to “take Care that the Laws be faithfully executed.”⁷⁹

A third group of measures involves the making of rules and regulations under preexisting congressionally granted authority. For instance, step 21—“[f]inalize regulations clarifying essential health benefits and parity requirements within ACA exchanges”—simply carries into effect authority granted by the Patient Protection and Affordable Care Act.⁸⁰

Step 11, “[n]ominate an ATF director,” is equally clearly within the President's constitutional powers; the Constitution expressly states that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Officers of the United States.”⁸¹ Likewise, the Constitution plainly authorizes the President's requests for information from executive branch officials, such as step 15, “direct[ing] the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies”; Article II provides that the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices.”⁸²

Finally, and perhaps most controversially, some of the President's measures entail the issuance of interpretations of existing laws. To this class belongs, for instance, step 16, “[c]larify[ing] that the Affordable Care Act does not prohibit doctors asking their patients about

⁷⁹ U.S. Const. art. II, § 3.

⁸⁰ Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 1321(a).

⁸¹ U.S. Const. art. II, § 2, cl. 2.

⁸² U.S. Const. art. II, § 2, cl. 1.

guns in their homes.” To be sure, the Article III judiciary must ultimately interpret laws when applying those laws in the context of concrete cases or controversies. But it is well established that the President also has the authority to interpret the law—and especially the power to announce legal interpretations concerning issues that have not yet been settled by the courts. In fact, the tradition of presidential clarifications of the law goes back to President George Washington’s Neutrality Proclamation. The tradition also has a solid grounding in the text of the Constitution; it is based on the Constitution’s vesting in the President of “the executive Power,” and in its imposition on the President of the power and duty to “take Care that the Laws be faithfully executed.”⁸³

In sum, although some opponents of gun regulation might disagree with some of the President’s executive actions as a matter of policy, those disagreements cannot plausibly be translated into constitutional objections. From a separation-of-powers perspective, the President has acted well within the bounds of his constitutionally assigned authority.

In closing, I note that I share the beliefs of many that the prevalence of guns in our country is by no means the only significant contributor to the tragedy at Newtown and to the many other gun-related massacres we have seen in recent months and recent years, or to the deaths of an average of over 30 Americans, nearly 5 of them children, *each and every day* as a result of gunfire homicides in less visible, and often virtually unnoticed, tragic incidents.⁸⁴

⁸³ U.S. Const. art. II, §§ 1, 3.

⁸⁴ The Center for Disease Control reports that in 2010, 11,078 individuals in the U.S. died from firearm-related homicides. 1,773 of them were between the ages of 0 and 19. *See* CENTER FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *WISQARS*

Violence has many causes. Violent video games, for example, some of them simulating mass shootings, may well play a significant role in the inculcation of violent attitudes among children.⁸⁵ And mental illness plainly played a significant part in bringing about the massacre at Newtown. If our country is to reduce the incidence of similar unspeakable violence in the future, the widespread availability of high-powered guns to people who should not possess them and who have no constitutional right to do so is by no means the only phenomenon that our government, our society, and our families need to address.

But it is simply not true that the presence of other causes of gun violence means that we neither can nor should do anything significant about the prevalence, too often in the wrong hands, of high-powered guns and high-capacity magazines that turn those guns from means of self-defense into weapons of mass destruction. It is not true constitutionally, it is not true politically, and it is not true morally. We must do our best to address in a serious way *every* source of avoidable death by firearms that we can, and if we always point to other problems still waiting to be solved we will never get started.

The time to get started on sensible gun regulation is not now—it was weeks, months, years, even decades ago. The Second Amendment is not a barrier. We have already delayed too long, and our society has paid a terrible price. We should delay no longer.

Fatal Injury Reports, National and Regional, 1999 – 2010,
http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html (last visited Feb. 4, 2013).

⁸⁵ See *Brown v. Entertainment Merchants Ass’n*, 131 S. Ct. 2729, 2767–71 (2011) (Breyer, J., dissenting).

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NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 10-7036

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DICK ANTHONY HELLER, et al., Plaintiffs-Appellants,

v.

DISTRICT OF COLUMBIA, et al., Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPELLEES' STATUTORY ADDENDUM

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Brady Center



To Prevent Gun Violence

**Testimony of Brian J. Siebel
Senior Attorney
Brady Center to Prevent Gun Violence
Before the Council of the District of Columbia
October 1, 2008**

Thank you, Chairman Mendelson and other members of the Council, for inviting the Brady Center to Prevent Gun Violence to speak at this important committee hearing.

The Brady Center to Prevent Gun Violence and the Brady Campaign to Prevent Gun Violence are the nation's largest organizations working for sensible gun policies. The Legal Action Project of the Brady Center represents victims of gun violence and defends gun laws in the courts.

In addition to the other measures being suggested here today, which we support, the Brady Center and Brady Campaign strongly urge the Council to pass an assault weapons ban, a ban on .50 caliber sniper rifles, and retain its recently-passed ban on high-capacity ammunition magazines, as part of its process of strengthening the District's gun laws in light of the *Heller* decision.

The Need for An Assault Weapons Ban

Assault weapons had been banned for more than 30 years under the broader D.C. ban on all semiautomatic weapons. However, now that that ban has been repealed, an assault weapon ban is needed to protect the people of the District, visitors, and law enforcement from these particularly dangerous weapons. An assault weapons ban would continue to allow law-abiding citizens to have common pistols in their homes for self-defense, and would remain in compliance with the *Heller* decision. We believe it is imperative for the Council, now that it has legalized common semiautomatic pistols, to restore a ban on military-style assault weapons.

Assault Weapons Are "Mass Produced Mayhem"

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. Even semiautomatic assault weapons unleash extraordinary firepower. When San Jose, California, police test-fired an UZI, a 30-round magazine was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semiautomatic.

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has described assault weapons in stark terms.

Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. **They are mass produced mayhem.**¹

Assault weapons have distinct features that separate them from sporting firearms.² While hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, the military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly. Assault weapons are generally equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession. Far from being simply "cosmetic," these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever.

Accordingly, ATF has concluded that assault weapons "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals."³ ATF's analysis of guns traced to crime showed that assault weapons "are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless."⁴

It is no accident that when a madman, Gian Luigi Ferri, decided to assault the law offices at 101 California Street in San Francisco, he armed himself with two TEC-9 assault weapons with 50 round magazines, which enabled him to kill eight people and wound six others.⁵ Or that the Columbine high school shooters who killed 12 students and a teacher included a TEC-9 assault weapon in their arsenal. Or that James Huberty used an UZI assault pistol and a shotgun to kill 21 people and wound 19 others at a McDonald's in San Ysidro, California.⁶ Or that Patrick Purdy used an AK-47 assault rifle to kill five children and wound 29 others and a teacher at an elementary School in Stockton, California. Equipped with a 75-round "drum" magazine, Purdy was able to shoot 106 rounds in less than two minutes.⁷ The list goes on.

¹ ATF, *Assault Weapons Profile* 19 (1994) (emphasis added).

² *Id.* at 20.

³ DEP'T OF TREASURY, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 38 (1998).

⁴ ATF, *Assault Weapons Profile*, *supra* note 1, at 19-20.

⁵ *Ferri Used Guns That California Ban Does Not Forbid*, SAN FRANCISCO EXAMINER, July 4, 1993.

⁶ *Satellite College Campus Helps to Heal the Scars at San Ysidro Massacre*, LOS ANGELES TIMES, Mar. 30, 1989; *A 77-Minute Moment in History That Will Never Be Forgotten*, LOS ANGELES TIMES, July 16, 1989.

⁷ *The Kinds of Guns School Killer Used*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989; Michael Taylor & Leslie Guevarra, *Myterious Scrawlings and Slogans, School Killer's Last Days, Toy Army in his Room*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989.

Assault Weapons Threaten Law Enforcement

Law enforcement officers are at particular risk from these weapons because of their high firepower, which often leaves them outgunned by criminals. A researcher for the Department of Justice found that

assault weapons account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.⁸

Assault weapons have even been used in a brazen attack at D.C. Police Headquarters. On November 22, 1994, a man armed with a MAC-11 assault pistol walked into Metropolitan Police headquarters and shot and killed Sergeant Henry Daly and FBI Agents Mike Miller and Martha Martinez. The shooter seriously wounded FBI Agent John Kuchta and shot at couches, walls, computers, and desks before shooting and killing himself with Agent Martinez's gun.⁹

In addition, numerous law enforcement officers have been killed with high-firepower assault weapons. Here are a few recent examples:

- **Philadelphia, PA. May 3, 2008.** Officer Stephen Liczbinski was shot and killed by an assault rifle as he was responding to a robbery at a Bank of America branch. Three men robbed the bank and were fleeing when Officer Liczbinski stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking Liczbinski numerous times. One suspect was eventually shot and killed by police and the other two suspects were arrested and charged with murder.¹⁰
- **Miami, Florida. September 13, 2007.** Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The suspect got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home and were granted permission to search by a female resident. The suspect grabbed a high-powered, military-grade rifle and fired at the police officers through a window, killing Officer Jose Somohano. The suspect then exited the house and shot three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.¹¹

⁸ Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, U. Penn. Jerry Lee Center of Criminology 87 (June 2004).

⁹ Brian Reilly, *Cop killers' guns similar; handgun converted to fiercer weapon*, THE WASHINGTON TIMES, May 1, 1995.

¹⁰ Joseph A. Gambardello, *Liczbinski suspect's girlfriend to stand trial*, PHILADELPHIA INQUIRER, July 17, 2008; *Officer shot, killed after bank robbery*, NBC 10.COM, May 3, 2008; Sergeant Stephen Liczbinski, [www.odmp.org](http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski), available at: <http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski> (last visited Sept. 30, 2008).

¹¹ David Ovalle et. al., *The murder and the manhunt started in a South Miami-Dade townhouse, zigzagged...*, MIAMI HERALD, Sept. 15, 2007.

- **Chantilly, Virginia. May 8, 2006.** A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station in suburban Virginia, killing Detective Vicky Armel immediately and wounding two other officers, one of whom, Officer Michael Garbarino, died nine days later from his injuries.¹²

The threat posed to law enforcement is one reason why major law enforcement organizations are united in supporting bans on assault weapons.

Assault Weapons Threaten Civilians

Assault weapons have also been used to massacre and terrorize civilians. Who can forget the nightmare we lived through in the District of Columbia and surrounding communities during the attacks committed by the D.C. snipers. Their weapon of choice? A Bushmaster XM-15 assault rifle.

There have been hundreds of other shootings committed with semiautomatic assault weapons. Here, we list just a few recent examples:

- **Arvada & Colorado Springs, Colorado. December 9, 2007.** One man with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others, including two teenage sisters, in Colorado Springs. He died after being shot by a security guard and then shooting himself.¹³
- **Omaha, Nebraska. December 5, 2007.** Nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in a Nebraska mall.¹⁴
- **Indianapolis, Indiana. June 2, 2006.** Seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.¹⁵
- **Tyler, Texas. February 25, 2005.** A gunman with a history of domestic violence and a felony conviction, who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse when his ex-wife exited the building. His ex-wife was killed along with a bystander who tried to shoot the gunman. The shooter's 23-year-old son and three law enforcement officers were wounded during the shooting, including a 28-year-old deputy who

¹² Ian Urbina, *Fatal police station attack shocks tranquil community*, NEW YORK TIMES, May 10, 2006; *Officer Killed*, BOSTON GLOBE, May 18, 2006.

¹³ Erin Emery, *Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people*, DENVER POST, Mar. 13, 2008.

¹⁴ *The American Way*, REGISTER-GUARD, Dec. 17, 2007.

¹⁵ Ashley M. Heher, *Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go*, HOUSTON CHRONICLE, June 4, 2006.

was in grave condition. The gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers.¹⁶

- **Akron, Ohio, February 24, 2005.** A man shot and killed his girlfriend and her seven-year old son using an AR-15 assault weapon, then fired more than one hundred rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.¹⁷

Assault Weapons Threaten Homeland Security

These weapons pose particular and severe risks for homeland security here in the Nation's Capital. The extraordinary firepower of these weapons could wreak havoc at any number of high-profile sites or events that occur in Washington, or victimize any number of high-profile targets, from government officials to foreign dignitaries.

And make no mistake: these weapons have great appeal for terrorists. The oft-seen file footage of Osama Bin Laden, aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and assault weapons.

The *Chicago Tribune* has reported that, found among the mounds of rubble at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled "How Can I Train Myself for Jihad" containing an entire section on "Firearms Training."¹⁸ Tellingly, the manual singles out the United States for its easy availability of firearms and stipulates that al-Qaeda members living in the United States "obtain an assault weapon legally, preferably AK-47 or variations."

Terrorists have used assault weapons in numerous attacks. I am going to mention just one that is close to home.

- **Langley, Virginia, January 25, 1993.** Pakistani national Mir Aimal Kasi killed two CIA employees and wounded three others outside the entrance to CIA headquarters in Langley, Virginia. Kasi used a Chinese-made semiautomatic AK-47 assault rifle equipped with a 30-round magazine purchased from a Northern Virginia gun store.¹⁹ After fleeing the country, he was arrested in Pakistan in 1997.²⁰

¹⁶ Bill Hanna & Jack Douglas Jr., *Rampage in Tyler leaves three dead, four wounded*, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, *Police order emergency trace on weapon used in shootings*, FORT WORTH STAR-TELEGRAM, Feb. 26, 2005.

¹⁷ Ed Meyer, *Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people*, AKRON BEACON JOURNAL, Feb. 24, 2005.

¹⁸ Paul Salopek, *A Chilling Look into Terror's Lair*, CHICAGO TRIBUNE, Nov. 18, 2001.

¹⁹ *CIA Killings Prompt Scrutiny on 2 Fronts: Fairfax Loophole Expedited Gun Purchase*, WASHINGTON POST, Feb. 11, 1993.

²⁰ Robert O'Harrow, Jr., *Kansi's Shadowy Stay in U.S. Leaves a Hazy Portrait*, WASHINGTON POST, Mar. 3, 1993.

.50 Caliber Sniper Rifles Pose Serious Dangers

Fifty caliber sniper rifles also pose an extraordinary risk in the District. In 1987, Barrett Firearms Manufacturing Inc., patented its self-described “armor-penetrating” .50 caliber BMG sniper rifle.²¹ Capable of destroying armored personnel carriers, aircraft and bulk fuel and ammunition sites, the .50 caliber sniper rifle is now proliferating in the civilian market.²² Accurate at up to 2,000 yards, it can inflict effective damage to targets over four miles away.²³ With more power on impact than any other semi-automatic rifle legally available on the civilian market,²⁴ the .50 caliber represents a serious threat to local law enforcement and national security. A 2004 report on airport security at Los Angeles International Airport warned that terrorists could use .50-caliber sniper rifles to target parked and taxiing airplanes “firing over 50 shots in five minutes.”²⁵ The Council should take action to prohibit the possession of these weapons in civilian hands.

High-Capacity Magazines Increase Firepower

The threat posed by military-style assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines, defined as those accepting more than ten rounds. The 1994-2004 federal ban on assault weapons also banned these magazines. By permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters. For example, the shooter at Virginia Tech equipped himself with numerous high-capacity magazines of up to 30 rounds, which enabled him to get off nearly 200 rounds in his attack. In self-defense situations, too much firepower is a hazard, because the tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.

Assault Weapons Bans Already In Place

Six states currently ban assault weapons. Those include California, which passed the nation’s first statewide ban in May 1989, as well as New Jersey (1990), Hawaii (1991), Connecticut (1993), Maryland (1994), Massachusetts (1998), and New York (2000). California expanded its ban in 2000 to include all semiautomatic rifles or pistols that have the ability to accept a detachable magazine and contain any one of a series of military-style features. We strongly support that legislation as a model for the District of Columbia.

²¹ Carolyn Marshall, *California Bans Large Caliber Guns, and the Battle is on*, NEW YORK TIMES, Jan. 4, 2005.

²² See, Government Accounting Office for U.S. House of Representatives, Committee on Government Reform, *Long Range 50 Caliber Sniper Weapons* 4 (May 3, 1999).

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ Donald Stevens, *Near Term Options for Improving Security at Los Angeles International Airport*, RAND (2004).

In addition, from 1994-2004, there was a federal ban on assault weapons. Plus, as mentioned above, ATF currently bans assault weapons from being imported into this country because they are not weapons suitable for sporting purposes.

Banning Assault Weapons and Sniper Rifles Is Consistent with *Heller*

A ban on assault weapons and .50 caliber sniper rifles would be constitutional and consistent with the Supreme Court's decision in *District of Columbia v. Heller*. In *D.C. v. Heller*, the Supreme Court narrowly defined the Second Amendment as protecting the right of law-abiding citizens to keep and use guns in the home for self-defense. At the same time, the Court indicated that the right to keep and bear arms is limited in a number of ways. The Court made clear that the Second Amendment does not entitle citizens to any and all guns. Certainly, military-style assault weapons and .50 caliber sniper rifles are not a part of this right. The Court held that not all "arms" are protected.

We also recognize another important limitation on the right to keep and carry arms. [*U.S. v. Miller* said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting carrying of "dangerous and unusual weapons."²⁶

Assault weapons and .50 caliber sniper rifles are certainly "dangerous and unusual weapons" according to any reasonable analysis of that phrase. They are military-style offensive weapons designed to slaughter human beings. This differentiates them from all hunting rifles and shotguns, as well as common handguns, which are often used in crime but have also been used in self-defense.

Moreover, assault weapons and .50 caliber sniper rifles are not "in common use." As semiautomatic versions of machine guns developed for use during the World Wars of the 20th Century, assault weapons are a relatively recent invention. Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no sporting purpose. And the Barrett .50 caliber sniper rifles was patented a mere twenty-one years ago, and was made for military, not civilian use.

Finally, assault weapon bans have been challenged in court, but have never been struck down as unconstitutional under the Second Amendment or under right to bear arms provisions in state constitutions.²⁷

Conclusion

Outside of the military or law enforcement, assault weapons and .50 caliber sniper rifles have no place in civilized society. We would urge the D.C. Council to adopt a ban on these weapons. Thank you.

²⁶ *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).

²⁷ See, e.g., *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995); *Robertson v. Denver*, 874 P.2d 325 (Colo. 1994); *Arnold v. City of Cleveland*, 616 N.E.2d (Ohio 1993).

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Wednesday June 19, 2013

The Buffalo News.com

City & Region

The return of the assault rifle; High-powered weapons seem to be regaining their deadly role in WNY crime and violence

BY Lou Michel - NEWS STAFF REPORTER

Updated: November 21, 2010, 12:00 AM Published: November 21, 2010, 12:01 AM

AK-47 rifles and other high-powered semi-automatic assault weapons were the guns of choice for street gangs back in the 1990s during the crack cocaine epidemic.

Drive-by shootings and AK-47s were synonymous in some Buffalo neighborhoods as city homicide levels reached an all-time high.

But now, more than six years after a federal ban on assault rifle sales ended, the feared weapon and similar ones appear to be regaining a foothold in local crime.

Consider:

* At the end of September, 15-year-old Dominique Maye was working at a computer in her aunt's East Side home when a gunman sprayed the house with some 19 rounds from an AK-47 in a drive-by shooting.

* A loaded AK-47 was confiscated in a raid late last month at a West Side apartment, where city narcotics detectives seized more than four ounces of crack and powder cocaine and arrested three individuals.

* An AK-47 was taken from a drug house on the 400 block of Cambridge Avenue during a series of raids at the beginning of November.

Those are just some of the incidents in the last year involving AK-47s and similar high-powered rifles city police say they have taken off the streets.

During a 22-month period prior to the expiration of the federal ban on assault rifle sales in September 2004, authorities confiscated 40 such guns in Buffalo.

By comparison, over the past 22 months, 84 of these types of firearms have been seized. That's a 110 percent increase in confiscations, based on figures provided by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

Throughout all of Erie County outside Buffalo, only two assault rifles were confiscated during the 22 months analyzed shortly before the ban ended. But that number increased in the just-concluded 22 months to 32 assault rifle seizures. That's a 1,500 percent rise. Assault weapons are generally defined as guns that have large-capacity magazines allowing for continuous firing of dozens of rounds, a pistol grip that permits spray firing from the hip and a folding stock that enables the weapons to be easily concealed.

The powerful high-caliber ammunition, another feature, is able to pass through multiple walls in a dwelling, adding to the danger of killing innocent people when drug gangs and other criminals have shootouts, authorities say.

So did the federal ban's expiration enable more of these weapons to enter New York State, even though the state has its own ban on assault guns?

ATF officials say they cannot comment on policy issues involving Congress, but concede it is possible that assault weapons legally purchased in other states may have ended up in Buffalo by way of the black market.

"The ATF has several ongoing investigations into illegal possession and trafficking of these types of firearms out of our Buffalo-area office," said Ronald B. Turk, special agent in charge of the ATF's New York field division, which oversees the entire state.

The local ATF office, Turk said, has more than two dozen of these weapons in its evidence vault.

But it remains unknown how many assault weapons have been purchased since the federal ban ended. That's because federal law prohibits the ATF from keeping records on any gun sales.

Officials at the Brady Center to Prevent Gun Violence in Washington, D.C., say that since the ban expired, the pace of violence inflicted by assault weapons has increased and Congress needs to take action to halt it.

"The growing number of police officers and average Americans being killed by assault weapons should worry all Americans concerned about making our neighborhoods safer," Brady Center President Paul

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Helmke said.

"These guns are the weapons of choice for mass killers, drug dealers, gang members and other rogue elements. And yet the NRA [National Rifle Association] continues to push harder and harder to put more of them in circulation. Assault weapons have nothing to do with the Second Amendment, and we as a nation should stop making it so easy for dangerous people to have access to them and create mayhem in our communities."

NRA officials did not respond to requests to comment.

>Tracing the guns

Marshall J. Brown, a longtime local advocate of gun ownership rights, says there is a place for these semi-automatic rifles.

"They are excellent for home protection and protection at businesses and in civil disturbances," Brown said. "As usual, criminals ignore gun laws and illegally possess arms of their choice, potentially outgunning decent citizens. In other words, gun laws only impact law-abiding citizens."

And while the ATF is not allowed to keep gun sale records, it does collect statistics on guns recovered in crimes, which provides a glimpse into the re-emergence of assault weapons in Buffalo and other big cities.

Because New York State has another law requiring a trace on the background of every gun seized in a criminal situation, local police agencies often get information from the ATF that leads to additional gun seizures and arrests, according to ATF spokesman Joseph Green.

Tracing, Green explained, provides a paper trail on who originally bought the gun and where.

"The traces lead us initially to potential straw purchasers who buy guns for someone else in another state," Green said. "Those individuals then bring the guns back to their state and keep them for themselves or resell them on the black market. You develop more leads, and you get more guns that way."

Straw buyers are individuals who pass a background check and legally purchase the gun for someone with a criminal record or from a state that bars ownership of assault weapons. Only a handful of other states prohibit the sale of assault firearms.

But criminals are often wise to the steps authorities take in tracing guns, as was the case in mid-October when Ferry-Fillmore District detectives, with assistance from ATF agents, arrested a deli owner for possession of an AK-47 loaded with 30 rounds.

The gun's serial number had been defaced, making it extremely difficult to trace.

>Progress made

And while efforts to halt the flow of these weapons is a priority, Buffalo Police Commissioner Daniel Derenda says the guns serve no useful purpose.

"In my opinion, they exist for one purpose and one purpose only and that is to kill," Derenda said.

The Buffalo Police Department, he says, has made significant progress in removing thousands of guns from the streets in recent years, including assault weapons.

"Since Jan. 1, 2006, just under 7,000 guns have been taken off city streets. They include assault weapons, handguns, shotguns and other rifles," Derenda said.

Mayor Byron W. Brown says he is well aware of the devastation assault rifles can cause when in the hands of criminals.

"Illegal assault weapons are even more lethal," he said last week, in vowing to continue providing resources to police for removal of those and other guns from city streets.

In perhaps the most brazen incident involving an assault firearm this year in the city, Dominique Maye was working at a computer at her aunt's Hewitt Avenue home the night of Sept. 30.

A gunman in a car began shooting at the house and one of the 19 rounds from the AK-47 struck the ninth-grader at Riverside Institute of Technology in the back and killed her. Police said she was an innocent victim in an attack that was aimed at someone else.

The incident, Brown said, "was horrible, tragic and shouldn't be happening."

The teenager's family could not agree more and wants AK-47s permanently banned.

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"It's made for destruction and it shouldn't be in the hands of anyone, except trained military personnel," said Dominique's stepfather, Brian Stiles. "For senseless reasons, that weapon has taken the life of a beautiful young girl. Nobody deserves what happened to Dominique."

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