

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

## July, 2021

### **New York: 2021 Gun Control Bills (List of gun control bills which passed in 2021).**

- A-613A/S-14A, Criminalizes the sale of ghost guns and requires gunsmiths to register and serialize firearms, rifles, shotguns, and unfinished frames or receivers they assemble.
- A-2111/S-5952, Provides taxpayer gifts for gun violence research; requires the tax commission to include space on the personal income tax return to enable a taxpayer to make such contribution; establishes the gun violence research fund.
- A-2666A/S13A, Enacts the “Scott J. Beigel unfinished receiver act”; relates to unfinished frames or receivers; establishes the crimes of criminal sale of an unfinished frame or receiver in the first and second degrees as class D and E felonies, respectively.
- A-6198B/S-5000B, Prohibits the sale, purchase, or transfer of firearms to anyone known to have an outstanding warrant for a felony or serious offense.
- A-6522/S-7152, Amends the definition of a “disguised gun” to include a weapon or device capable of being concealed on a person from which a shot can be discharged through the energy of an explosive which is designed and intended to appear to be a toy gun.
- A-6762B/S-7196, Relates to the dangers to the safety and health of the public caused by the sale, manufacturing, importing and marketing of firearms and whether such activity constitutes a public nuisance.
- A-7243/S-1251, Requires the Division of Criminal Justice Services to publish quarterly reports beginning October 1, 2021, providing information related to firearms, rifles and shotguns used in the commission of crimes in the state of New York.
- A-7302/S-2981, Creates a firearm violence research institute and a firearm violence research fund.

[http://www.gunpoliticsny.com/?page\\_id=23911](http://www.gunpoliticsny.com/?page_id=23911)

### **Gun liability bill awaiting signature, but raising questions**

In an effort to reduce gun violence, some New York lawmakers are hoping Governor Cuomo will sign a bill that has passed both the Assembly and Senate.

The Gun Industry Liability Bill is considered the first state effort to hold the gun industry accountable.

However, some local law enforcement says that won't keep guns out of the hands of criminals.

Addressing violence, Saratoga Springs Assistant Police chief John Catone said if we enact legislation, it needs to target the guns that need to come off the street.

"If you are a criminal you're not going to one of the gun dealers to get your gun, you're getting it off the street," said Catone.

<https://cbs6albany.com/news/local/gun-liability-bill-awaiting-signature-but-raising-questions>

### **Schuyler Co. Govt Opposes New NYS Gun Control Bill**

A new gun law may be in the works for New York State and one local government is calling on Governor Cuomo to veto it.

The legislation if approved by the Governor would allow anyone that's a victim of gun violence to sue the company that made the gun.

The Schuyler County Attorney Steven Getman helped write a letter on behalf of the County Legislature in hopes of persuading Governor Cuomo to \*not\* sign it into law.

In response to the bill advancing in Albany, the Schuyler County Legislature voted unanimously to send the letter to Governor Cuomo urging him to veto the law. Getman says the County Legislature opposes the proposal because a criminal who uses a gun has no connection to the business that made or sold that gun.

"It would be like declaring drunk driving a public nuisance and then allowing people to sue the local car dealer whenever anybody misuses a motor vehicle in a drunk driving accident," Getman said.

Getman explains this new bill doesn't only apply to big gun businesses. It also will affect small businesses.

"It can apply to anybody who sells any kind of firearm. Including a mom-and-pop shop in your local neighborhood or anybody that sells magazines or accessories," Getman said.

The bill requires gun manufacturers to prevent their guns from falling into the hands of criminals. However, the process to do exactly that remains vague and unclear. Instead, Getman believes we should focus on other issues to combat gun violence like the state's current bail reform.

<https://www.weny.com/story/44126362/schuyler-co-govt-opposes-new-nys-gun-control-bill>

## **Some Fear Senate Bill Would Drive Gun Makers Out Of New York**

The NYS Senate passed a bill that some fear will drive gun makers, like Remington Arms, in Ilion, out of New York State. Bill S1048A opens gun makers, distributors, and others involved in the process, to potential liability if the firearm is harmfully misused. The bill passed Wednesday by a vote of 43-20.

The bill, in part, reads: "the legislature further finds that given the ease at which legal firearms flow into the illegal market, and given the specific harm illegal firearm violence causes certain New Yorkers, those responsible for the illegal or unreasonable sale, manufacture, distribution, importing or marketing of firearms may be held liable for the public nuisance caused by such activities."

Asked for their input, Remington Arms provided a formal letter of opposition to the bill from NSSF- the National Shooting Sports Foundation. The statement says, in part: If enacted, businesses in the firearm industry will abandon the New York market to avoid a tidal wave of vexatious "regulation through litigation" the bill is intended to bring about. New York residents will no longer be able to exercise their Second Amendment right to purchase firearms. The bill will undermine and diminish, if not violate, the Second Amendment rights of New York resident.

<https://www.wktv.com/content/news/Some-fear-Senate-bill-would-drive-gun-makers-out-of-New-York-574549001.html>

## **Effort to ban lead ammo in NY fails**

Hunters and Recreational shooters breathed a sigh of relief last week when the state Legislature adjourned without imposing a partial ban on the use of traditional ammunition; traditional being lead bullets....

Bills introduced in both the Senate and Assembly this session would have amended New York's Environmental Conservation Law to ban the use of lead ammo for hunting on all wildlife management areas, state forests, forest preserves, state parks or any other state-owned land that is open for hunting.

The second part of the amendment is more insidious. It would have banned the use of lead ammunition on any land area contributing surface water to the New York City water supply. "Lead ammunition" means any ammunition that contains one or more percent of lead by weight.... It's not just the city's reservoir properties that would be impacted. Most of the Catskill Forest Preserve, and many places beyond the preserve's boundary, including privately held properties, contribute water to the city's reservoir system.

<https://www.poughkeepsiejournal.com/story/sports/recreational/2021/06/23/lead-ammo-ny-still-permitted-why-hunters-still-need-help/5313168001/>

## **Schuyler County Passes Youth Hunting Law**

Schuyler County has become the latest county in New York to allow the hunting of deer by 12-and 13-year-olds with a firearm or crossbow for the coming fall season.

Meeting in regular session on Monday, the county legislature voted unanimously to enact a Local Law that approves a pilot program allowing 12- and 13-year old youths to do so through 2023 under the supervision of an experienced adult hunter.

Prior to its passage, Schuyler County Sheriff William Yessman, Undersheriff Breck Spaulding, County Clerk Theresa Philbin, and County Attorney Steven Getman all endorsed the law. In addition, members of the community, including a retired New York State Conservation officer, spoke in favor of the law at Monday's meeting. No one spoke in opposition to the legislation.

The law as passed states that "deer hunting is a valued tradition for many Schuyler County families, providing quality food to county residents and reducing the negative impacts of overabundant deer populations on our agriculture, forests, and communities."

<https://www.fingerlakesdailynews.com/2021/06/15/1069414/>

## **Appeal to Erie County Libertarian Party's Lawsuit Challenging the NY Pistol Permit Law to be Considered by Supreme Court**

After six years of litigation, the lawsuit challenging pistol permit law in New York State in The Libertarian Party of Erie County, New York v. Andrew Cuomo has been appealed and will finally be discussed by the judges at a private conference on June 17 for consideration to be heard by the Supreme Court.

The grassroots lawsuit launched in 2015 has made its way through the courts. The focus of this case is to overturn the entire New York State pistol permit regime and have the court recognize "the government tyranny argument" as the basis for its decision.

[https://www.einnews.com/pr\\_news/543244479/appeal-to-erie-county-libertarian-party-s-lawsuit-challenging-the-ny-pistol-permit-law-to-be-considered-by-supreme-court](https://www.einnews.com/pr_news/543244479/appeal-to-erie-county-libertarian-party-s-lawsuit-challenging-the-ny-pistol-permit-law-to-be-considered-by-supreme-court)

## **NRA to defend against NY attorney general in Manhattan, drops own lawsuit**

The National Rifle Association said on Friday it will defend against New York Attorney General Letitia James' attempt to shut it down in a state court in Manhattan, and has withdrawn its own lawsuit seeking to block her efforts.

The NRA made the move after a federal judge on May 11 threw out the gun rights group's January bankruptcy case....

Founded in 1871 in New York, the NRA had sued James in the state capital of Albany on the same day the attorney general brought her lawsuit.

It later filed similar counterclaims in the Manhattan case, accusing James of violating its constitutional free speech rights in a politically motivated “retaliation campaign” because the Democrat disliked what it stood for.

Dropping the Albany case “will ensure that the NRA’s claims proceed promptly to discovery and a full vindication of its members’ rights,” NRA lawyer William Brewer said in a statement.

The NRA has been instrumental in thwarting Democratic-backed gun control measures in the U.S. Congress, and making gun rights a core Republican Party policy objective.

<https://www.cnn.com/2021/06/04/nra-drops-lawsuit-against-ny-attorney-general-to-pursue-claims-in-manhattan.html>

### **Biden Targets Law-Breaking Gun Dealers in Anti-Crime Plan**

Biden’s plan focuses on providing money to cities that need more police, offering community support and most of all cracking down on gun violence and those supplying illegal firearms.

“These merchants of death are breaking the law for profit,” Biden said. “If you willfully sell a gun to someone who’s prohibited, my message to you is this: We’ll find you and we’ll seek your license to sell guns. We’ll make sure you can’t sell death and mayhem on our streets.”

<https://news.wttw.com/2021/06/25/biden-targets-law-breaking-gun-dealers-anti-crime-plan>

### **Biden's Gun Control Plans Won't Do Much To Address Surging Homicides**

Cracking down on “rogue gun dealers” and enforcing background checks won’t stop criminals from arming themselves.

According to a 2019 report from the Bureau of Justice Statistics (BJS), just 7 percent of criminals who use guns buy them “under their own name from a licensed firearm dealer.” Furthermore, such transactions are legal as long as the buyer is not disqualified from owning guns. A licensed dealer who sells a gun to someone who does not yet have a felony record, even if that person later uses the gun to commit a crime, is not violating federal law, let alone doing so “willfully.”

A dealer *is* violating federal law if he fails to conduct a background check or if he knowingly sells a firearm to someone who is legally disqualified. But even assuming the Biden administration’s new policy deters the “rogue gun dealers” who deliberately sell firearms to illegal buyers, people with felony records can always enlist people with clean records to buy guns for them. While such straw purchases are illegal, the dealer is willfully violating the law only if he knows that the buyer is acting on behalf of someone else.

In any event, the “zero tolerance” initiative will have no impact at all on the vast majority of guns used in crimes—something like 93 percent, according to the BJS study, which was based on a 2016 survey of prison inmates. The survey found that 43 percent of

inmates who had used a gun obtained it "off the street or from the underground market," 25 percent got it "from a family member or friend, or as a gift," 7 percent "found it at the scene of the crime," and 6 percent stole it

<https://reason.com/2021/06/24/bidens-gun-control-plans-wont-do-much-to-address-surg-ing-homicides/>

### **Biden DOJ Proposes Placing Certain AR-Pistols Under National Firearms Act**

The Department of Justice (DOJ) issued a proposed rule Monday that will designate certain AR-pistols as "short barreled rifles" and place them under the purview of the National Firearms Act of 1934.

DOJ also put forward a model red flag law for states to follow in crafting their own legislation.

Should this proposal become an actual regulation, it would mean the purchase of certain AR-pistols with stabilizer braces would require the purchaser to be fingerprinted and photographed, undergo a background check, pay the federal government a \$200 tax on the firearm, and register the firearm with the ATF. That process takes nine or ten months to complete.

As for the model red flag law, the DOJ designated the proposal under the moniker of "Extreme Risk Protection Orders."

The DOJ did not note that California has a red flag law, yet eight people were killed in a mass shooting in San Jose on May 26, 2021.

They did not point out that Indiana has a red flag law, yet eight people were killed in Indianapolis in an April 15, 2021, mass shooting at a FedEx facility.

The DOJ did not mention that Colorado has a red flag law, yet ten people were shot and killed in Boulder, Colorado, on March 22, 2016.

<https://www.breitbart.com/politics/2021/06/07/biden-doj-proposes-placing-certain-ar-pistols-under-national-firearms-act/>

### **Biden's Gun Schemes Illustrate the Foolishness of Firearms Regulations**

As expected, the Biden administration released proposed new rules for pistol braces and model legislation for "red flag" laws that make it easier to confiscate privately owned firearms. Also as expected, the proposals are ludicrous. On the one hand, they are pointless and nitpicky rules that are ultimately unenforceable, and on the other hand they are dangerous end-runs around due process that threaten fundamental rights. Taken together, they illustrate the unserious nature of gun regulations which are crafted more to appeal to political audiences than to achieve positive results.

Stabilizing braces were developed to help disabled veterans more accurately shoot pistols (usually those built around AR-15 receivers) one-handed..stabilizer brace rules affect mostly disabled shooters and fanciers of a particular type of firearm.

Red flag laws affect potentially any gun owner by allowing for property seizures and confrontations with law enforcement without due process.

<https://reason.com/2021/06/18/bidens-gun-schemes-illustrate-the-foolishness-of-firearms-regulations/>

### **Senate Republicans Blast Proposed ATF Rules, Warn They Could Lead To Gun Registry**

Regarding the ATF's proposal to redefine frames and receivers, the senators warn that the rule, if put in place, "would take a significant step toward a national gun registry by requiring FFL dealers to maintain personal gun owner information and records of transactions involving firearms, including their makes, models, and serial numbers—forever."

<https://bearingarms.com/camedwards/2021/06/21/senate-republicans-blast-proposed-atf-rule-on-braces-warn-it-could-lead-to-gun-registry-n46838>

### **The Biden Administration's Model 'Red Flag' Law Belies Due Process**

As President Joe Biden promised in April, the U.S. Department of Justice (DOJ) recently published model "red flag" legislation that authorizes court orders prohibiting gun possession by people deemed a threat to themselves or others. The proposed language describes a process that is rigged against respondents from beginning to end, allowing courts to strip people of their Second Amendment rights based on little more than bare allegations by potentially mistaken, biased, or malicious petitioners....

The DOJ ... It recommends that authorized petitioners also include family members, defined as parents, spouses, children, or siblings of the respondent; household members, which would include housemates and cohabiting girlfriends or boyfriends; "dating or intimate partner[s]"; health care providers; and officials at schools the respondent has attended within the preceding "six months," "one year," "two years," or "other appropriate time period specified by state law," plus "any other appropriate persons specified by state law." Depending on the state, that last category may include additional relatives, employers, co-workers, former housemates, ex-spouses, and former dating partners.

the DOJ language does not require that the risk be imminent.... Furthermore, the model statute says the court "shall take up and decide such an application on the day it is submitted" or, if that is not feasible, "as quickly as possible." In other words, the Justice Department is encouraging haste even though its proposed legislation does not require the sort of risk that might justify it.

The DOJ is similarly blind to the cost of delaying the hearing that is supposed to happen after a judge rubber-stamps one of these petitions. It says only that a hearing should be held within an "appropriate time period specified by state law." Despite its avowed concern about due process, the Justice Department expresses no opinion about whether that "appropriate time period" should be days, weeks, or months.

After a hearing, the model statute says, the court "may issue" an "extreme risk protection order" if the petitioner presents "specific facts giving rise to the concern" that the

respondent poses a threat to himself or others. As with ex parte orders, any sort of threat will do. It could be "an extreme risk," as the name of the order suggests; merely "a significant risk," whatever that means; or any "other appropriate standard established by state law."

Likewise with the standard of proof, which the DOJ suggests could be a "preponderance of the evidence," the more-likely-than-not standard used by a few jurisdictions, or any "other appropriate standard specified by state law." Tellingly, the model statute does not mention "clear and convincing evidence," the relatively strict standard...

Without legal representation, respondents must fend for themselves in a daunting system that in practice presumes their future guilt. The Justice Department has nothing to say about that problem

Due process protections are especially important when the government contemplates taking away someone's constitutional rights based on inherently iffy predictions about what he might otherwise do. The risk that someone will use a firearm to kill himself or others, however small, is apt to loom larger in the minds of judges than the risk that he will unjustly but temporarily lose his Second Amendment rights. Given that reality, legislators have an obligation to make sure that red flag respondents have ample opportunity to challenge the claim that they cannot be trusted with firearms. So far legislators have done a poor job of that, and the Justice Department is pointing them in exactly the wrong direction

<https://reason.com/2021/06/21/the-biden-administrations-model-red-flag-law-belies-the-justice-departments-avowed-commitment-to-due-process/>

### **Maloney, Colleagues Reintroduce 3D Printed Gun Safety Act**

Congresswoman Carolyn B. Maloney (D-NY) on June 29 joined with Representatives Ted Deutch (D-FL), Bradley Schneider (D-IL), Debbie Wasserman Schultz (D-FL), and Val B. Demings (D-FL) and Senators Edward J. Markey (D-MA) and Robert Menendez (D-NJ) to reintroduce the 3D Printed Gun Safety Act, legislation to prohibit the online distribution of blueprints and instructions that allow for the three dimensional (3D) printing of firearms.

[https://www.thenationalherald.com/archive\\_politics\\_usa/arthro/maloney\\_colleagues\\_reintroduce\\_3d\\_printed\\_gun\\_safety\\_act-2795705/](https://www.thenationalherald.com/archive_politics_usa/arthro/maloney_colleagues_reintroduce_3d_printed_gun_safety_act-2795705/)

### **Appeals Court Blocks Ruling Overturning California 'Assault Weapons' Ban**

The U.S. 9th Circuit Court of Appeals issued a stay of Judge Roger T. Benitez's June 4 decision deeming semi-automatic firearms as a good that citizens are entitled to possess for domestic use and defense.

Benitez's move to overturn the ban allowed the state 30 days to challenge the decision. On June 10, Attorney General Rob Bonta filed an appeal which the 9th Circuit agreed to take up. That court granted Bonta's motion and paused Benitez's ruling pending decisions in other gun cases that have already been presented before other courts, effectively maintaining the assault weapons prohibition until further notice.



The stay will remain in effect until the 9th Circuit rules in another case regarding California's assault weapons laws. That case is also now contingent on a pending decision in a separate case over California's outlawing large-capacity magazines.

An 11-judge 9th Circuit "en banc" panel, a bench comprising mostly Democratic appointees, is scheduled to hear arguments in that case Tuesday.

<https://www.nationalreview.com/news/appeals-court-blocks-ruling-overturning-california-assault-weapons-ban/>

### **Gillibrand: Bar people with hate crimes convictions from owning guns**

People who have been convicted of hate crimes would be barred from buying or possessing firearms in the U.S. under a new bill backed by Sen. Kirsten Gillibrand.

Gillibrand pointed to the rise in hate crimes and suspected hate crimes in which shootings have played a role in recent months, including the deaths of eight people in March, six of whom were women of Asian descent.

The bill would prevent anyone with a misdemeanor hate crimes convictions and higher from owning or buying a gun.

[https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2021/06/22/gillibrand--bar-people-with-hate-crimes-convictions-from-owning-guns?cid=share\\_twitter](https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2021/06/22/gillibrand--bar-people-with-hate-crimes-convictions-from-owning-guns?cid=share_twitter)

### **Missouri Now Refuses to Enforce Certain Federal Gun Laws**

The law (Missouri House Bill 85) defines various federal laws that Missouri considers an inherent violation of its citizens' rights under the Second Amendment:

- (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law abiding citizens;
- (2) Any registration or tracking of firearms, firearm accessories, or ammunition;
- (3) Any registration or tracking of the ownership of firearms, firearm accessories, or ammunition;
- (4) Any act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens; and
- (5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

Such laws, the new Missouri law insists, "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state...."

<https://reason.com/2021/06/17/missouri-now-refuses-to-enforce-certain-federal-gun-laws/>

## **Likely voters back right to carry concealed guns, 2-1**

In a slap at President Joe Biden's new effort to impose gun control and tax and regulate one of the nation's most popular (and concealable) firearms, people overwhelmingly have endorsed expanding the Second Amendment to include carrying concealed weapons.

In a new Zogby Poll provided to Secrets Thursday just minutes before the administration released its rule to target AR-rifle-style pistols, likely voters by a 63%-29% margin endorsed the idea.

In his analysis, pollster Jonathan Zogby said that most voters "agreed that the Second Amendment to the Constitution should also encompass the right to carry a concealed gun. A majority of voters supported concealed carry as a part of the Second Amendment in all regions."

[https://news.yahoo.com/americans-back-carry-concealed-guns-153600022.html?soc\\_src=social-sh&soc\\_trk=tw&tsrc=twtr&guccounter=1](https://news.yahoo.com/americans-back-carry-concealed-guns-153600022.html?soc_src=social-sh&soc_trk=tw&tsrc=twtr&guccounter=1)

## **Poll: Majority of Americans Believe the Second Amendment Exists to Keep 'Tyrannical Government in Check'**

While pushing for more gun control during a speech last week, President Joe Biden brought out the overused "hunting" argument as an excuse to infringe on Second Amendment rights.

"No one needs to have a weapon that can fire over 30, 40, 50, even up to 100 rounds, unless you think the deer are wearing Kevlar vests or something," he said.

Much to the contrary, poll data shows a majority of Americans believe the Second Amendment exists to keep tyrannical governments in check — not to keep the freezer full of deer meat.

According to a Rasmussen report released on Monday, 54 percent of voters agree that America's founders "explicitly wanted an armed citizenry to keep potentially tyrannical governments in check," including 32 percent who strongly agree.

<https://www.breitbart.com/2nd-amendment/2021/06/28/americans-second-amendment-government/>