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# The New York State SAFE Act of 2013



Presented by: Sheriff Barry Virts  
Wayne County Office of Sheriff  
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# Information...

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# Bodies of Law Amended

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- Family Law
- Mental Hygiene Law
- General Business Law
- Penal Law
- Criminal Procedure Law
- Corrections Law

# Family Law

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- Family Court Judge **MUST** make an inquiry about firearms when issuing orders of protection.
- Family Court OOP's now triggers **MANDATORY** suspension or revocation of a person's firearms license and surrender of guns, when judge finds certain conditions are met:
  - That there's a substantial risk of harm of future gun violence
  - There were threats of deadly force
  - The conduct which resulted in OOP involved physical injury (used to be "serious physical injury")

# Mental Hygiene Law

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## **Reporting Requirement**

- Going forward, when a mental health professional makes a determination that a patient is likely to “engage in conduct that would result in serious harm to themselves or others”, the professional must report it.

# Mental Hygiene Law (Cont.)

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## **Reporting Requirement (Cont.)**

- Who is a mental health professional?
  - Physician
  - Psychologist
  - Registered nurse
  - Licensed clinical social worker
- Who must the professional report to?
  - Local Director of Community Services
  - The Division of Criminal Justice Services

# Mental Hygiene Law (Cont.)

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## **Outpatient Treatment**

- Person's who are receiving mental health outpatient treatment pursuant to a court order are now under more scrutiny, and can be sentenced to such treatment for 1 year (up from 6 months).
- Directors of outpatient treatment programs now have an affirmative duty to notify other directors if a patient changes or may change their county of residence.

# Mental Hygiene (Cont.)

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## **Outpatient Treatment (Cont.)**

- Prior to the expiration of a court ordered term of treatment, a director of community services must review whether the patient “continues to meet the criteria for [treatment].”
- If the patient meets the criteria, the director may petition the court for an order extending the period of treatment.

# General Business Law

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## **New Requirements for Private Gun Sale**

- Before any sale between private individuals, a national instant criminal (NIC) background check must be preformed by a dealer, who may charge up to \$10 for this service.
- Transfers of guns between immediate family members (spouses, domestic partners, children, step-children) are exempted from this requirement.

# Penal Law

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## **New Crimes Established**

### ➤ **Marks Law**

- The intentional killing of a person known to be a first responder who is acting in the course of their official duties, now qualifies as either First Degree Murder or Aggravated Murder.

### ➤ **Criminal Facilitation**

- Any transfer of a gun by or to a prohibited person, which is then used to commit a crime, is now a felony. The law is aimed at prosecuting those who deal in “community guns.”

# Penal Law (Cont.)

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## **New Crimes Established (Cont.)**

- **Criminal Possession of a Weapon on School Grounds**
  - Similar to the previous law, but it is now an E felony
- **Criminal Possession of a Firearm**
  - Also similar to the previous law, but now there is no requirement that the firearm be loaded to facilitate prosecution.

# Penal Law (Cont.)

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## **Assault Weapon Redefinition**

- Assault weapons are now defined using a “one feature” test. This test is applied to different types of weapons.
- A **semi-automatic rifle with a detachable magazine** that possesses one of the following features will be classified as an assault weapon:
  - Telescoping stock;
  - Pistol grip that protrudes conspicuously beneath the action of the weapon;
  - Thumbhole stock;
  - Second handgrip that can be held by the non-trigger hand;
  - Bayonet mount;
  - Flash suppressor, muzzle break, muzzle compensator or threaded barrel;
  - Grenade launcher.

# Penal Law (Cont.)

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## **Assault Weapon Redefinition (Cont.)**

- A **semiautomatic shotgun** will be classified as an assault weapon if it has one of the following characteristics:
  - Telescoping stock;
  - Thumbhole stock;
  - Second handgrip that can be held by the non-trigger hand;
  - The ability to accept a detachable magazine;
  - A fixed magazine capacity in excess of 7 rounds.
  - Revolving cylinder shotguns are reclassified as assault weapons outright.

# Penal Law (Cont.)

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## **Assault Weapon Redefinition (Cont.)**

- A **semiautomatic pistol** will be classified as an assault weapon if it has one of the following characteristics:
  - The capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;
  - A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip or silencer;
  - A shroud which allows the non-trigger hand to grip the barrel of the gun without being burnt;
  - A manufactured weight of fifty ounces or more when the pistol is unloaded.

# Penal Law (Cont.)

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## **Assault Weapon Redefinition (Cont.)**

- What does it mean if you own a gun that now qualifies as an assault weapon?
  - Transfer and sales restrictions—If you possess a newly classified assault weapon, you may now only transfer it to a licensed firearms dealer, or an out of state buyer.
  - Registration requirement—You must register your assault weapon with the Division of State Police by January 15, 2014. The forms for registration will be made available by April 15, 2013.

# Penal Law (Cont.)

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## **Ammunition Capacity Restrictions**

- The law has reduced the maximum permissible ammunition capacity for all guns in NYS from 10 rounds to 7 rounds. Only 7 round magazine will be sold in NYS going forward.
- Owners of 10 round magazines will be allowed to keep them, but will only be allowed to load them with 7 rounds, starting April 15, 2013.
- Owners of magazines which can hold more than 10 rounds must either modify it so that it holds no more than 10, responsibly discard it, sell it to an out of state buyer, or sell it to a dealer by January 15, 2014.

# Penal Law (Cont.)

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## **Ammunition Sales**

- A seller of ammunition must register with the State Police. Entities currently licensed to sell firearms do not have to register.
- Commencing on January 15, 2014, prior to any sale of ammunition, a registered seller must perform a limited background check through the State Police's soon to be operational Statewide License and Record Database.
- Those sellers capable of performing a NIC check on site may do so in lieu of using the State database.

# Penal Law (Cont.)

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## **Safe Storage**

- Persons possessing any type of gun must now store them in a safe or some other secure lockable container, or in the open with a trigger lock, if they cohabitate with someone who is prohibited from possessing a firearm under 18 U.S.C. 922(g). Such persons include:
  - Felons
  - The mentally ill/disabled
  - Persons guilty of domestic violence misdemeanors
  - Persons under an order of protection

# Penal Law (Cont.)

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## **Pistol Licenses**

- New disqualifiers have been added when considering whether a person may obtain a pistol license. In addition to existing disqualifiers, licenses may not be given to those persons who are:
  - Fugitives from justice
  - Drug addicts (as defined by 21 U.S.C. 802)
  - Illegal aliens
  - Dishonorably discharged veterans
  - Persons who have renounced their citizenship
  - Persons who have been involuntarily committed
  - Persons under state guardianship due to mental illness

# Penal Law (Cont.)

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## **Pistol Licenses (Cont.)**

- Local licensing officers must now, as part of their investigation procedures, petition the new State Police Database for any relevant information on the applicant.

# Penal Law (Cont.)

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## **Pistol Licenses (Cont.)**

- **FOIL Restrictions:**
  - There is currently a 120 day FOIL freeze on license information which went into effect the day the law was signed.
  - Going forward, license holders and applicants will be able to request that their information not be disclosed as a public record, thereby shielding it from FOIL discovery. The forms for such a request should be available from the State Police by February 15, 2013.

# Penal Law (Cont.)

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## **Pistol Licenses (Cont.)**

- License recertification:
  - A license holders are now required to recertify with the State Police every 5 years. Such recertification will be in a form to be determined by the State Police, possibly electronically, and will request updated personal information from the licensee.
  - Failure to recertify shall act as a revocation of a persons license.



## **Restriction on FOIL requests about pistol permit holders.**

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By granting citizens the option of having their names and addresses withheld from public disclosure, the new law does provide a mechanism to allow people to decide for themselves whether their personal information should be accessible to the public. I believe, however, that no one should have to explain why their personal information should remain confidential. A better procedure, I believe, is simply to exempt all this personal information from FOIL disclosure.



# **Killing of emergency first responders.**

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The new law makes killing of emergency first responders aggravated or first degree murder, enhancing penalties for this crime and requiring life without parole. First responders need this protection, evidenced all too often by attacks on them when they attempt to provide help, and in special recognition of the terrible attacks on two firefighters in Webster, NY and attacks on first responders in Jefferson County.



## **Requirement of NICS checks for private sales**

**(except between immediate family).**

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I believe that this will ensure that responsible citizens will still be able to obtain legal firearms through private transactions, with the added assurance that private buyers are approved by the federal National Instant Criminal Background Check System. I remain concerned that this provision will be very difficult to enforce and will likely only affect law abiding citizens.



**Comprehensive review of mental health records before firearms permits are granted  
and review of records to determine if revocation of permits is required.**

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Sheriffs believe that there is an urgent need to increase funding for mental health care. The new law imposes reporting requirements on many mental health care professionals and others who may make a determination that a person is a danger to himself or others. The law further gives needed authority to courts or others who issue firearms permits to deny permit applications or to revoke permits already issued. I believe that this issue demands a much more full and detailed discussion about how to keep guns out of the hands of such people. The Sheriffs of New York want to pursue these issues with the Governor and the State Legislature.



# Safe storage of firearms

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The new law provides that guns must be safely stored if the owner lives with someone who has been convicted of a felony or domestic violence crime, has been involuntarily committed, or is currently under an order of protection. I agree that firearms owners should have the responsibility to make sure that their weapons are safeguarded against use or access by prohibited persons, and the new law adds these protections to ensure that weapons are safely and securely stored.



# Increased penalties for illegal use of weapons

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The new law adds several increased sanctions for violation of New York gun laws and creates new gun crimes which did not previously exist. These new provisions will provide added tools for law enforcement to prosecute such crimes. I further believe that the new provisions should help deter future misuse of firearms. The Sheriffs'

Association also suggest that the legislature consider limitations on plea bargaining for all gun crimes.



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I have a strong believe that  
modifications to the NY SAFE Act  
are needed as follows;



# **Assault weapon ban and definition of assault weapons.**

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I believe that the new definition of assault weapons is too broad, and prevents the possession of many weapons that are legitimately used for hunting, target shooting and self-defense. Classifying firearms as assault weapons because of one arbitrary feature effectively deprives people the right to possess firearms which have never before been designated as assault weapons. I am convinced that only law abiding gun owners will be affected by these new provisions, while criminals will still have and use whatever weapons they want.

# Inspection of schools by state agencies.

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The new law transfers to state agencies the responsibility to review school safety plans. The Sheriffs' Association expects that funding will be transferred to these state agencies to implement safety proposals. Sheriffs and local police provide this service in all parts of the state and can perform these duties efficiently. As the chief law enforcement officer of the county, Sheriffs are in the best position to know the security needs of schools in their own counties, and the state should help to fund these existing efforts by Sheriffs and local police departments to keep our schools safe. Because Sheriffs and local police are already deeply involved with school safety plans, have developed emergency response plans, and are familiar with structural layouts of schools in their counties, they should be included along with state counterparts in any effort to review school safety plans.

# Reduction of ammunition magazine capacity.

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- The new law enacts reductions in the maximum capacity of gun magazines. I believe based on my years of law enforcement experience that this will not reduce gun violence.
- The new law will unfairly limit the ability of law-abiding citizens to purchase firearms in New York
- It bears repeating that it is our belief that the reduction of magazine capacity will not make New Yorkers or our communities safer.



## **Five year recertification of pistol permit status and registration of existing assault weapons**

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The new law delegates to the State Police the duty to solicit and receive updated personal information of permit holders every five years in order to maintain these permits. Further, the law requires owners of certain existing firearms now classified as assault weapons to register these with the State Police within one year. The recertification and registration conflict with Sheriffs' duties regarding issuance of pistol permits. All records should be maintained at the local, and not the state level. This information should be accessible to those who are responsible for initial investigation of permit applications. Pistol permit information should be maintained in one file at the local level, and forwarded to a statewide database for law enforcement use. It bears repeating that it is my belief that pistol permit and any registration information required by the law should be confidential and protected from FOIL disclosure.



# Sale of Ammunition

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The new law imposes several new provisions regarding how, and from whom, ammunition can be lawfully purchased. The law should be clarified about the use of the Internet as a vehicle for these sales, out-of-state sales to New York residents, and other issues. Businesses have said that they do not understand the new provisions and are concerned that they will have to cease operations.



# **Law enforcement exemptions must be clarified.**

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The new law has many provisions that might apply to law enforcement officers and there has been much confusion about whether existing law enforcement exemptions continue to apply. I understand that the Governor and Legislature have already agreed to review and modify these provisions where necessary, and the Sheriffs want to be part of the discussion to make the changes effective. Additionally, the exemptions should apply to retired police and peace officers, and to others in the employ of the Sheriff and other police agencies who perform security duties at public facilities and events.

# Method of bill passage

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It is the view of the Sheriffs' Association that anytime government decides it is necessary or desirable to test the boundaries of a constitutional right that it should only be done with caution and with great respect for those constitutional boundaries. Further, it should only be done if the benefit to be gained is so great and certain that it far outweighs the damage done by the constriction of individual liberty. While many of the provisions of the new law have surface appeal, it is far from certain that all, or even many, of them will have any significant effect in reducing gun violence, which is the presumed goal of all of us. Unfortunately the process used in adoption of this act did not permit the mature development of the arguments on either side of the debate, and thus many of the stakeholders in this important issue are left feeling ignored by their government. Even those thrilled with the passage of this legislation should be concerned about the process used to secure its passage, for the next time they may find themselves the victim of that same process. Fortunately, the Governor has shown himself open to working with interested parties to address some of the problems that arose due to the hasty enactment of this law. The Sheriffs' Association will work with the Governor and the Legislature on these issues.



# In addition...

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I understand my Constitutional obligations and the concerns of constituents. Sheriffs and other law enforcement officers are not called upon by this new legislation to go door-to-door to confiscate any weapons newly classified as assault weapons, and will not do so.

Sheriffs represent all the people, and I took an oath to uphold the Constitution of the United States and the Constitution of the State of New York.

I will continue to enforce all laws of the state and will protect the rights of all citizens, including those rights guaranteed by the Constitution of the United States and the Constitution of the State of New York.

# Helpful Resources

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- Governor's FAQ webpage
  - <http://www.governor.ny.gov/2013/gun-reforms-faq>
- Division of State Police Hotline
  - 1.855.529.4867
- Wayne County Sheriff's Office
  - <http://www.waynecosherriff.org>
  - Click on NY SAFE ACT Info



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Questions?



# THANK YOU...

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