SHOOTERS COMMITTEE
ON
POLITICAL EDUCATION

POSITION PAPERS

NEW YORK STATE LEGISLATION

2010

The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders.

Justice Benjamin Cardozo
The Nature of the Judicial Process
New Haven, 1921

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MISSION STATEMENT

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Constitution, Amendment II

The Shooter's Committee on Political Education was founded in 1965 by a group of firearms owners in western New York. SCOPE is a civil rights organization focused on the protection and preservation of the right of firearms ownership as guaranteed by the Second Amendment to the Constitution of the United States. The founding of SCOPE and its subsequent growth were in response to the attacks on the Second Amendment as being outmoded in modern times or not being applicable to the rights of individuals. In other words, firearms ownership, much less use, was no longer considered by some to be politically correct.

While SCOPE role is focused primarily on the political process, it is an issues oriented organization. It does not align itself with any political party nor does it endorse any candidates for elective office. Our function is to counter assaults on the right of firearms ownership. This entails providing legislators and executives with timely and accurate information to support sound decisions.

In a free society, it is inevitable that the needs of the public will come into conflict with the rights of the individual. The SCOPE legislative team reviews all proposed firearms legislation for its impact on the legitimate firearms owner, its economic cost to the state, and its potential for achieving its stated objective. In developing our position on a specific piece of legislation or regulatory proposal, SCOPE goes through an extensive review process. All proposals are examined in light of their relationship to legitimate state interests and their potential for achieving objectives substantially related to satisfying those interests.

SCOPE's purpose is to maintain the right of individuals to own and use firearms for lawful purposes. The Supreme Court in its landmark 2008 decision in *District of Columbia v. Heller* clearly upheld this right. We do recognize that we live in a real world where individual rights may conflict and the state has a legitimate interest in resolving those conflicts. Any regulation by the state, however, must serve an important governmental objective and must be closely related to the achievement of that objective. SCOPE will oppose, with all its resources, any proposal that is not based on sound technical grounds or that infringes on the rights of firearms owners for the purpose of promoting a political philosophy, advancing a social theory, or as an emotional response and is not based on clear Constitutional grounds.

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POSITION STATEMENT

A9864/S4752 & A9904
PROHIBIT THE POSSESSION OF .50 CALIBER RIFLES

CONCEPT

The proposal would ban the sale or possession of all rifles of .50 caliber or larger. The particular target of this legislation is the .50 Browning Machine Gun (.50 BMG) cartridge as used in a number of bolt action and semi automatic target rifles. The proposal is based on the premise that rifles of this caliber or larger are intended for military purposes only and have no legitimate civilian or sporting purpose. Moreover, it is contended that these rifles are potential weapons of choice for violent criminals, international and domestic terrorists, militias, and cults.

POSITION

The proposed legislation should not be enacted. Such mischaracterizations are based on false and misleading premises and would create problems where none currently exists. Large caliber, long-range rifle shooting is a perfectly legitimate sporting activity and poses no threat to public safety. It must be noted that these rifles are not the "weapon of choice" for criminal groups and that there is, in fact, no documented record of their actual use in a criminal incident in the United States. Exaggerated, misleading, and erroneous claims have been used to demonize a specific firearm and to attempt to paint it as a threat to pubic safety.

History

A little background is helpful in understanding this issue. Development of the .50 BMG cartridge was begun in 1918 in response to a request from General Pershing for a large caliber machine gun primarily for aircraft use. Military use expanded to include aircraft, antiaircraft, antimaterial, and long-range suppressive fire. The use of this cartridge in long-range rifles grew out of the recognition by some military personnel in the field during the Korean and Vietnam wars of a military need for a long-range precision rifle. When the military hierarchy did not pursue the subject, private research and development took up the challenge. By 1982, target rifles were on the commercial market. The focus of the civilian shooters was on the technical challenge of accurate long range shooting. Later adoption by the military for combat applications was an ancillary benefit to national security.

Long range rifle shooting has been a recreational and competitive activity in the United States for over 150 years.

The concept of long-range rifle competition is not a new one. Long-range rifle shooting has been a popular sport throughout the history of our country. Many major national and

international competitions were held at the Creedmoor Rifle Range on Long Island, which opened in 1873. The first major international competition on the new range was between the United States and Ireland, representing the United Kingdom, held in 1875. The match, which was shot at 800, 900, and 1000 yards, was won by the United States. Matches at 1000 yards have been a component of the National Matches since their inception. The introduction of rifles chambered for the .50 BMG cartridge has permitted an increase in the distance and presented competitive shooters with new challenges.

The Fifty Caliber Shooters Association (FCSA)[1] is the national governing body for sports shooting with the .50 BMG. The FCSA has over 4,000 members in 22 countries. The stated purpose of the FCSA is to advance the art of extreme long-range accuracy with rifles chambered for the .50 BMG cartridge. It provides the environment for individuals to acquire the necessary technical and scientific knowledge needed to increase their long range shooting skills. It makes available the infrastructure for long-range rifle shooter development and competition, serving as the forum for technical information and assistance through the association's publications and website. "Our hobby is about engineering, mathematics, and physics, not crime and shooting per se."[2]

The proposed legislation bans all rifles of .50 caliber or larger, regardless of use.

This proposal would ban a large number of big game rifles in calibers ranging from .500 through .700. These rifles, which are designed for hunting dangerous game, are intended for use at ranges of less than 200 yards. Ammunition for these rifles is designed with this use in mind and is not ballistically suitable for long range shooting. The purpose of these rifles is purely sporting and this is recognized in federal law, where they are exempt from the prohibition on rifles with a bore over .5 inch.[3]

Access to potentially destructive .50 BMG ammunition is limited or prohibited.

The only new .50 BMG ammunition available to the civilian market, produced domestically or imported, is loaded with conventional ball projectiles.

Remanufactured .50 BMG ammunition loaded with armor piercing, tracer, and incendiary projectiles is available to a limited extent on the civilian market. The source of these projectiles was the Department of Defense (DOD). As part of the Conventional Ammunition Demilitarization Program, DOD paid private contractors to take possession of damaged, obsolete, or surplus ammunition without restriction as to disposition. The firms then broke down the ammunition, recycled the components, and remanufactured completed ammunition for sale to foreign military purchasers or on the civilian market. A prohibition on commercial sale in the United States was imposed on these contracts starting in 2001.

The ammunition described above dates from World War II (or prior) designs. Ammunition loaded with projectiles utilizing newer technology, such as the M903 SLAP[4] or Mk 211[5] projectile, is manufactured exclusively for the military and has never been available on the civilian market.

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[1] Fifty Caliber Shooters Association, PO Box 111, Monroe, UT 84754. www.fcsa.org
[2] Fifty Caliber Shooters Association Fact Sheet (ND)
[3] 18 U.S.C. § 921(4)(C)
[4] Saboted Light Armor Penetrator
[5] An armor piercing, incendiary and explosive projectile (HEIAP), known as the Raufoss, after its Norwegian manufacturer, NAMMO Raufoss.

While the .50 caliber BMG round is powerful, its destructive capabilities are regularly overstated.

The .50 BMG round is indeed a powerful cartridge with excellent long-range performance. It achieves this performance by utilizing a heavy bullet with a high ballistic coefficient at about the same initial velocity as a conventional .30 hunting rifle. It is this capability to shoot accurately at long range that attracts .50 caliber BMG rifle shooters.

Proponents of banning the possession of these rifles attribute tremendous destructive power to them. These grossly exaggerated claims are then amplified by the popular press leading to an almost mystical belief in their destructive capability. It has been alleged that .50 BMG projectiles will penetrate everything from 1 inch armor plate to 3½ inch manhole covers.[6] Gun control advocates have claimed that they are capable of "knocking a locomotive off the tracks"[7] or shooting down an aircraft.[8]

With respect to the armor piercing capability of the .50 BMG cartridge, the U.S. military specifications for penetration of homogenous steel plate are as follows:

M2 Ball	.32 inches @ 500 meters	.16 inches @ 1200 meters
M2 Armor Piercing	.75 inches @ 500 meters	.40 inches @ 1200 meters

There are projectiles with considerably better performance, such as the M903 SLAP and Mk 211 noted above, but they have never been commercially available in the United States. By way of comparison, the Caliber 7.62 NATO M61 Armor Piercing rifle cartridge was designed to penetrate .20 inches of steel plate at 500 meters. It can be clearly seen that, while the .50 BMG cartridge is indeed powerful, it hardly possess the "shock and awe" attributed to it by the sponsors of this legislation.

Bringing down an aircraft, even during landing or take off, would be extremely difficult. The military does not even train troops using .50 BMG rifles in this tactic. The .50 BMG simply does not have the power to do enough damage to put a multi-engine aircraft at risk. A .30 hunting rifle would be equally effective. The US Air Force determined in 1943 that a .50 BMG based weapons system, even one capable of firing 120 rounds per second, was not adequate for engaging enemy aircraft. A considerable amount of effort was spent developing a .60 cartridge until, in 1953, the Air Force determined that a 20mm (.80 caliber) projectile was the minimum required to meet their requirements.[9]

There is no record of a locomotive being visibly moved by a .50 projectile. Given the relative disparity in their weights, it is highly unlikely. Discounting adhesive traction, the total theoretical movement would be less than 0.01 inches.

The argument put forth by the proponents of legislation to ban these rifles seems to be based on the premise that if they were employed by the military they are too dangerous and should not be available to civilians. They ignore the fact that these rifles were purely a civilian, private sector development. This is fear mongering based on scenes from movies and television shows – and not reality TV.

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[6] NYS Assembly. Bill A09864 Sponsor's Memo
[7] Congressman Jim Moran (VA)
[8] Tom Diaz, Interview on CBS News Show *60 Minutes*, Jan. 9, 2005
[9] F.W. Hackley, W.H. Woodin, E.L. Scranton (1978). *History of Modern U.S. Military Small Arms Ammunition.* Gettysburg PA, Thomas Publications 178-205

The .50 BMG rifle was developed by private citizens for civilian use, without government funding, prior to its adoption by the military.

The military requirement for an effective long-range rifle began to emerge in the Korean War and became clear during Vietnam. One-off rifles were put together in the field using captured Russian anti tank rifle actions and .50 BMG machine gun barrels. They proved the concept but lacked the refinement of a formal accuracy development effort and were handicapped by the lack of suitable ammunition. While this was apparent to the troops on the ground, they were not able to convince the military hierarchy of the need for a weapon of this type. Without funding, formal development within the military languished.

In the late 1970's, interest had developed among individuals in the private sector in extreme long range shooting as a technical challenge. They began to advance accurate long range shooting as a sport and competitive activity. The need for a more powerful cartridge to meet the ballistic requirements of shooting at over 1000 yards led to the adoption of the readily available .50 BMG cartridge. After several years of design and engineering work, production .50 BMG rifles went on the market in 1982. Development of more accurate bullets and match-grade ammunition suitable for very long range shooting continued, further enhanced by the formation of the FCSA in 1985.

The result was that when the military recognized the need for the .50 BMG rifle as a weapon just prior to the first Iraq war, there were suitable rifles and precision ammunition available. All developed by target shooters in the private sector with no government funding.

These are not the "weapon of choice" for criminals

These rifles are 4 to 5 feet long, weigh between 25 and 40 pounds and cost from $3,000 to $8,000. This is not a highly mobile or concealable weapon. To suggest that these rifles should be banned on the premise that they might someday, somewhere be used in a street crime is pure conjecture.

RECOMMENDATION

The proposed legislation is a blatant attempt to demonize a particular group of rifles based on their physical characteristics. Using claims that range from exaggeration to being demonstrably false, these rifles are falsely represented as a threat to public safety if not national security.

This is a case of attempting to create a problem where none exists. We are convinced that if this legislation is enacted, the sponsors will be back next session using the same arguments against another long-range cartridge. This is a campaign against a skill as well as against a rifle.

The FCSA and its members have provided the country with a valuable service in the development and refinement of the .50 BMG cartridge for long-range precision shooting. When the military needed it, it was ready, along with the knowledge base to insure effective implementation. They deserve a commendation, not condemnation.

This legislation should not be enacted.

POSITION STATEMENT

A2881/S2379 & A9141/S5561
PROHIBIT POSSESSION OF FRANGIBLE AMMUNITION, CHANGE THE DEFINITION OF ARMOR PIERCING & EXPLOSIVE AMMUNITION

CONCEPT

The proposal expands the definition of armor piercing projectiles to include additional materials and construction methods that are professed as capable of penetrating ballistic vests of the type worn by law enforcement personnel. While it is critical that the law be kept current with changes in technology, it is equally important that such changes be based on factual information from technically competent sources. Decisions must be based on demonstrated performance and not on marketing claims and press releases.

POSITION

Oscar Wilde once said, "[a]ll bad poetry springs from genuine feeling." These proposals are the legislative equivalent. While we share the stated purpose of the proposed legislation -- maintaining the safety of law enforcement personnel -- we believe the changes in definition and the resulting restrictions have no basis in fact and do nothing to achieve this result. Moreover, in one case, it disregards the common law principle that a crime requires knowledge or criminal intent. The current state law is in agreement with federal law[1] and is entirely adequate for the intended purpose.

The expansion the current Penal Code definition of "armor piercing ammunition" to include projectiles composed of ceramics or polymer plastics.[2]

These proposed changes should be rejected, as neither of these materials is suitable for the manufacture of armor piercing ammunition.

We do not know of any handgun projectile that is made of ceramic material and intended to be armor piercing. Ceramic materials would appear to be a poor choice for armor penetration as they would be much more likely to shatter than penetrate. There have been several patents over the last 20 years for ceramic frangible projectiles intended for frangible training ammunition (see below), but none has proven practical.

We see no reason to include polymer plastics in this definition. Plastic projectiles are used, in fact, in training ammunition and blank ammunition because they are the antithesis of regular ammunition, with rapid velocity loss and limited range. Polymers are also used as binders in some frangible bullets. There have been claims made for new products, made of carbon based plastic polymers, that are purported to be armor piercing. None as ever proven effective. Perhaps the best-known example was the "Black Rhino" announced in 1994 but never submitted to the ATF for testing, nor put in production.[3]

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[1] 18 U.S.C. § 921 (17)
[2] P.L. § 265.00 (18)
[3] Fox Butterfield, (1994, December 29). *Company Puts Hold on a Plastic Bullet*. New York Times
Kelly Heyboer, (1995, March). *Shooting Blanks*. American Journalism Review

The fact remains, regardless of the claims of the inventors of "new technologies", that the laws of physics continue unchanged. An effective kinetic energy (KE) based armor piercing projectile must be made of a non-deformable material tougher than the armor, delivered at a high enough velocity and against a small enough area to present more force than the armor can resist. The law restricts the use of those materials that have proven technically and economically suitable for armor piercing handgun projectiles, and handgun bullets are way too small to utilize any other penetrator technology.

Add a new definition for "Devastator Ammunition", defined as a projectile that is capable of being used in handguns and that is designed to explode on impact.[4]

The proposed change should be rejected, as the net effect is to substitute an obsolete trade name for a perfectly adequate and more comprehensive technical definition.

There appears to be little point in this proposed change. Knowingly possessing ammunition, in fact merely a bullet, containing an explosive substance designed to detonate on impact is already illegal in New York State.[5] This definition seems adequate if it is desired to add additional offenses. The replacement of a clear, generic term with a product trademark seems to be directed at inciting an emotional response based on what is, at best, a misconception.

This proposal is presumed to be directed at Devastator® ammunition manufactured by Bingham Ltd from 1979 to about 1981[6]. The bullets in this ammunition were otherwise conventional hollow points containing a small capsule of lead azide, a primary explosive. The capsule was intended to detonate on impact and enhance the expansion of the hollow point bullet. The explosive charge was far too small to cause any direct damage. As federal law does not prohibit or regulate explosive projectiles containing less than ¼ ounce of explosive,[7] the Government proceeded against Bingham Ltd using explosive restrictions in the Organized Crime Control Act[8]. While it may be occasionally found in old stocks, this ammunition has not been manufactured in over 25 years. In any case, they did not represent a performance improvement over conventional ammunition.

Add a new definition for "frangible ammunition", defined as a projectile that is capable of being used in handguns and is composed of hybrid materials, pressed, or glued together, and designed to fracture or disintegrate on impact.[9]

As frangible projectiles, by definition, fragment completely upon impacting anything harder than itself, it cannot in any sense be construed to be an armor-piercing projectile. In 2002, an anonymous rumor spread via the internet that frangible bullets would split upon impacting a ballistic vest and penetrate it. Tests conducted under controlled conditions quickly determined that in no case did a frangible bullet penetrate a vest and no incursion exceeded the penetration of a high performance conventional bullet.[10]

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[4] New P.L. § 265.00 (25)
[5] P.L. § 265.01 (7)
[6] The "Devastator" name has been used for other shooting products, including Lyman Products bullet molds and a custom pistol cartridge.
[7] 18 U.S.C. § 921 (4)
[8] 18 U.S.C. § 841-847
[9] New P.L. § 265.00 (24)
[10] Orange County Sheriff's Department. Orange County CA www.ocsd.org

Frangible bullets are designed to disintegrate on impact with a hard surface into particles so small that they lose velocity almost immediately and are unlikely to cause injury. The first bullets of this type were developed in the 1930's for use in amusement park shooting galleries. These bullets, made of lead and sodium carbonate and loaded in .22 short cartridges, were marketed under the trade names of "Spatterless" and "Spatterproof". They were discontinued in the 1980's. The military developed frangible .30 caliber machine gun ammunition during World War II for the purpose of training aerial gunners using towed targets. The bullet was designed to disintegrate if it hit the lightly armored tow plane. The bullet, made of powdered lead and Bakelite, was standardized as Ball, Frangible M22.[11] It was never developed for use in handguns.

Modern frangible handgun ammunition was developed in response to the need for law enforcement training ammunition that could be safely utilized in realistic training scenarios employing close range and multidirectional shooting using a wide range of reactive targets. The primary need was to eliminate ricochets and over-penetration. This would permit the construction of such facilities from lighter, less costly material.

The result was the development of frangible bullets, comprised of about 90% powdered, non-toxic metal, usually zinc or copper, and 10% binder.[12] These bullets disintegrate upon impacting a hard surface and perform about the same as conventional full-jacketed bullets upon impacting a soft target. Frangible ammunition usually has a maximum range of about half that of conventional ammunition. There is clearly no reason for including frangible ammunition in the category of "armor piercing". This would be legislation based on urban legend.

RECOMMENDATION

With respect to the specific items in A2881/S2379:

We fully support Section 2 that would make possession of armor piercing ammunition with intent to use against another a class D felony, and attempted possession with intent to use against another a class E felony. We oppose the inclusion of frangible ammunition. The possession of any explosive substance with intent to use is already a class B felony.[13] We fully support Section 3 that would increase the penalty for aggravated assault upon a police or peace officer.

We oppose Section 4, 5, and 6 of the proposed legislation to change the definition of armor piercing ammunition and to include new prohibited types for frangible and "devastator" ammunition for the reasons stated above.

We oppose Section 7 that would remove knowledge as a component of the offense of possession of explosive ammunition or evidence of possession with intent to use unlawfully as a component of the offense of possession of armor piercing or frangible ammunition[14]. This contravenes the basic common law precept that a crime requires intent. Such ammunition is not necessarily marked as to type and may be in packaging

[11] The Corning Glass Works experimented with glass bullets as part of this project.
[12] John F. Mullins, (2001). *Frangible Ammunition – The New Wave in Firearms Ammunition*. Paladin Press, Boulder CO.
[13] P.L. § 265.04 (1)
[14] Amended P.L. § 265.01 (7,8)

with coded or foreign language markings. We also oppose penalizing simple possession by collectors, scholars, etc.

We support Section 8 with respect to the inclusion of possession with intent to use armor piecing ammunition.[15]

We oppose Section 9 with respect to the inclusion of frangible and "devastator" ammunition for the reasons stated above. We have no objection to the inclusion of armor piercing ammunition.[16]

We have no objection to Section 10 providing an exemption for officers at correctional and detention facilities.[17] It would appear that this section is redundant, as these people are already exempt by virtue of their peace officer status. We have no objection to Section 11 providing an exemption for manufacturers.

We believe the technical definitions presented in A2881/S2379 are defective:

With respect to the "devastator" ammunition, the issue has already been addressed. Explosive handgun ammunition (or rifle ammunition for that matter) is a rarity for the simple reason that it does not work. The U.S. military hasn't used explosive bullets in small arms since World War I, as small arms projectiles are too small to contain a useful amount of explosive. As noted above, Devastator® ammunition has not been manufactured in over 25 years. Possession and use of explosive bullets is already illegal.[18] This is a case of using inflammatory rhetoric for political purposes.

Frangible ammunition is simply not armor piercing ammunition and poses no additional threat to law enforcement personnel. It is intended to disintegrate on impact with a hard surface, making training for a dangerous profession safer. It certainly will not penetrate a ballistic vest. The proposed legislation is based on an urban legend.

To be effective and enforceable, legislation addressing armor piercing ammunition must be based on the design and construction of the bullet, as well as the material used. It must address existing technologies and not attempt to preempt future developments. This was the method employed in 1986 in the drafting of the federal legislation and in the 1993 amendment.[19] The National Rifle Association was instrumental in drafting the original bill and fully supported the amendment.

Sections 1 and 2 of A9141/S5561 should be rejected for the reasons stated above.

Legislation cannot be based on marketing claims and media hype. History is replete with promoters of amazing new discoveries that repeal the laws of physics. Nor should it be influenced by the deliberately misleading claims of gun control advocates. This is not an area for experimentation that may result in exposing law enforcement personnel to unnecessary risk. The use of terms such as "cop killer bullets" to arouse media hype and inflame public opinion do nothing to achieve a higher level of officer safety.

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[15] New P.L. § 265.02 (9,10)
[16] P.L. §.265.10 (1,2)
[17] P.L. §.265.20 (a)(2)
[18] P.L. §.265.01 (7) and P.L. § 265.04(1)
[19] 18 U.S.C. § 921(17)

ADDENDUM

This addendum contains information supplemental or peripheral to the Position statement on this bill.

US CODE

The most of the federal law pertaining to firearms is contained in Title 18, Chapter 44, Sections 921-931. The section covering armor piercing ammunition is included here:

18 U.S.C. § 921(17)

(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by federal or state environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device

ARMOR PIERCING BULLETS

The effort to develop pistol caliber penetrators grew out of the need for law enforcement to deal with use of automobiles by organized crime during Prohibition. All the major U.S. manufacturers produced "metal piercing" pistol ammunition until the early 1950's. Never a big seller, only Winchester continued it in their product line until about 1960. Germany accidentally produced 9mm ammunition with penetrating capabilities during World War II when they load ammunition with steel cores to conserve lead. After the war, it was sold as cheap practice ammunition and, before anyone figured out its penetrating capabilities, it had been virtually all consumed. In short, the older types of penetrators have been out of production for over 50 years and are now collector's items.

Military and police interest revived in the late 1960's resulting in an array of monolithic and jacketed penetrator designs, some of rather exotic architecture. Few got past the development stage and only two, the Swedish M39B 9mm and the American KTW designs, reaching production quantities. The other endeavors, which number over 65 unique types, only resulted in leaving collectors "with a withering array of unobtainable specimens".[20]

[20] Collins, Matthew, *Pistol Caliber Penetrators – History and Legal issues*, 468 IAA Journal 4-8 (2009)

The Swedish firm Bofors[21] developed the 9X19 M39B round in the late 1950's for the Swedish military. The bullet, weighing 106 grains, is comprised of a lead core in a steel jacket covered by a thin copper coat. The jacket is heavily reinforced in the front. This bullet will penetrate Level IIa and IIIa vests of the type worn by law enforcement personnel. The law defining armor piercing bullets had focused on bullet cores or solid bullet material. This bullet turned the design concept on its head by making the jacket the penetrating element and the composition of the core material irrelevant.

Bullets of this design were imported into the United States in very limited quantities for law enforcement use. It has been reported that the Secret Service strongly opposed importation even for law enforcement or military use, fearing that there would be "leakage to the dark side". There was some civilian availability in Sweden but whether this was through regular commercial channels or leakage from the military is unknown. Production ceased in 2003. There is no record of this design being used in any other caliber. The federal law was amended in 1993 with the addition of 18 U.S.C. § 921 (17)(B)(ii) to cover this design.

The KTW design was brought to market in 1968 for law enforcement use in dealing with suspects in automobiles or behind barricades. It was marketed only to law enforcement agencies. The projectile was comprised of a monolithic core made of steel, brass, or tungsten coated with Teflon. The Teflon had nothing to do with the penetration characteristics; it was solely for the purpose of protecting the bore of the firearm from the hard penetrator. Production ceased in 1985, after a 1982 farcical NBC News special falsely labeled it as a cop killer that would penetrate Kevlar vests – something it was never designed to do.

The New York State definition of "armor piercing ammunition"[22] is identical with 18 U.S.C. § 921 (17)(B)(i) in the federal law included above. In the A5382 Bill Summary, the Summary of Provisions includes the expansion of the New York State definition to include the text from (B)(ii) above. It is not, however, included in the actual bill text.

LIMITED PENETRATION AMMUNITION

Although not normally classified as "frangible", there is "pre-fragmented" ammunition with bullets designed to break up on contact and disperse their energy to the target. These bullets are intended for defensive use in environments where ricochets or over penetration would be a hazard.

Magsafe, produced by Magsafe Ammo Inc., Casselberry, FL (www.magsafeonline.com), is made of lead shot .14 or .15 inches in diameter imbedded in an epoxy resin.

The Glaser Safety Slug, produced by Dakota Ammo Inc., Sturgis SD (www.dakotaammo.net), is made of lead shot .05 to.11 inches in diameter compressed in a thin wall jacket with a soft polymer cap.

Both of these bullet designs are engineered to fragment on impact and rapidly transfer their energy to the threat with limited penetration. The purpose is to achieve maximum

[21] Now owned by the Norwegian firm Nammo AS
[22] P.L. § 265.00 (18)

stopping power without over-penetration. Bullets missing the intended target will fragment and not ricochet off hard surfaces and will not penetrate a sheet rock wall. They will certainly not penetrate ballistic vests. In fact, the small shot sized Glaser bullets are recommended for use only in warm climates where light clothing is worn.

Glaser ammunition was used by the federal Sky Marshals until it was determined that conventional jacket hollow point ammunition did not pose a risk of over-penetration and potential damage to the aircraft did not impair airworthiness.

In the late 1980's and early 1990's, both Glaser and Magsafe produced pre-fragmented ammunition that would penetrate the ballistic vests of the day when fired at close range. They were the Glaser black tip and the Magsafe Agent rounds. They achieved this by driving very light bullets at a very high velocity. The 9mm Magsafe round used a 52 gr. Bullet at 2120 fps. Vests have improved significantly in the last 15 years. Some manufactures of current Level II and up vests claim to protect against these rounds. As they have been out of production for over 15 years and have not been identified as a threat, they have not been formally tested against the current National Institute of Justice standard.[23]

[23] NIJ Standard 0101.06 (July 2008)

POSITION STATEMENT

A6468B/S6005, S4397A
MICROSTAMPING OF FIREARMS PARTS

THE CONCEPT

Firearms, specifically semiautomatic pistols, would be required to be manufactured with an alphanumeric or geometric[1] identifier microscopically engraved in two locations such that they would be transferred from the working surfaces of the firearm to the cartridge case upon firing. In the proposal, the characters would be located on the tip of the firing pin and the breech face. The purpose would be to provide an investigative linkage from cartridge cases recovered at the scene of an incident to the point of sale of the firearm.

Historically, permanent and unique serial numbers have been used to trace firearms from the manufacturer to the initial, if not current, owner. Serial numbering and manufacturer identifiers have been in use for over 200 years and have been mandatory in the United States since 1968. This does, however, require recovery of the firearm. The proposed legislation is intended to extend this capability to fired cartridge cases ejected at the incident scene.

OUR POSITION

While microstamping, if it could be fully developed and properly implemented, would be a valuable forensic tool, it remains, at present, unproven for the intended purpose. The technology is clearly capable of performing the specified micro engraving. The viability of the data being transferred reliably and accurately to the cartridge case over even a fraction of a service life of several thousand rounds is still unproven. Microstamping is described in the legislation as “an evolutionary forensic technology”. As this evolution has not yet been completed, any broad scale implementation is, at best, premature.

DESCRIPTION OF THE TECHNOLOGY

The vendor of NanoTag™ technology proposes creating the microstamp on the components of the firearm by ultraviolet photoablation using a high-powered laser. UV radiation is used to remove material from the firing pin or breech face by illuminating the surface with a laser beam. The microstamp image is created by the positioning of the beam using a system of computer controlled mirrors.

The characters in the microstamp marking normally range from 50 to 100 microns in height. A smaller size would compromise the mechanical strength of the individual characters. The material between the characters/symbols is removed only within a small circular area, leaving the top of the characters/symbols flush with the original surface. The depth of characters is 25 microns, or about .001 inch. The area covered is a circle with a diameter of .037 inches (the firing pin tip diameter is typically about .075 inches.).

[1] Geometric identifiers include gear, radial bar, and dot codes.

A 1 micron titanium carbide layer is then deposited on the surface to strengthen the characters. The NanoTag™ is a sole source technology marketed by Hitachi Digital Imaging[2]. It is currently utilized in combating the counterfeiting of microchips. However, the firing cycle of a handgun, where parts are subjected to sudden, violent motion and impacts at pressures as high as 45,000 psi, is markedly different from the working environment of a microchip.

OUTSTANDING CONCERNS

This technology has only been subjected to low volume testing, using only firing pin encoding, and the results have been decidedly mixed. The small number and variety of firearms that have been included are not fully representative of all the designs in the market as each pistol model has different dynamics. The tested images have been limited to eight alphanumeric characters, which is about half the number that would be needed to include the required data. The "successful" demonstrations have been in closely controlled, almost laboratory environments, not in the streets.

No serious attempt has been made to determine the viability of scaling up the technology or to determine the economic and operational implications of implementation. The economic burden on manufacturers, and ultimately passed on to consumers, has not been clearly defined. The cost of the reengineering of production processes to incorporate the additional steps required would obviously be significant. Ongoing production expenses to perform the added tasks, as well as insure compliance through the manufacturing, shipping, and marketing functions have not been considered.

All of the testing that we have seen has been with transfers only on the primer from the impact of the firing pin. As the legislation proposes that the encoding be placed in at least two locations on the fired cartridge case, this would require impressions on the cartridge case proper. While the primer is intended to be deformed by the firing pin and is made from comparatively soft metal, the case proper is made of a much harder material, either brass, aluminum or steel. Ammunition manufacturer's head stamps and shear marks from lateral or rotary bolt motion would add to the problem.

This proposal has the potential of being another CoBIS. After 10 years and more than $25 million in state funding, the system has collected 230,000 samples with no resulting criminal convictions. Given that this would only apply to firearms legally purchased in New York State, the effectiveness would be limited at best. These firearms represent a fraction of the identified firearms used in crimes and it is extremely rare that they are in the possession of a lawful owner at the time. This imposes a significant financial burden on both consumers and government, as it must be remembered that law enforcement is also a consumer. CoBIS was enacted on the same premise as this proposal and the same result can be expected.

This proposal provides no "circuit breakers" to prevent the roll out of what is basically a laboratory level model if performance failures or exorbitant costs appear in the transition to the real world environment. Given the limited testing with, at best, inconclusive results with sample cartridge cases and no development or testing of any commercial scale production equipment suitable for firearms production, this is a highly likely probability.

[2] Hitachi Via Mechanics, 4 Delta Drive, Londonderry, NH 03053

PEER REVIEWED TESTING

Testing of this technology was performed by George Krivosta of the Suffolk County Crime Laboratory in Hauppauge, New York and published in a peer-reviewed journal[3]. In the course of these studies, three questions were addressed:

> Would the marking from the microstamp be readily decipherable?
>
> What is the wear resistance of the image engraved on the firing pin?
>
> Is the technology tamper resistant?

Included in the study were sample cases from a .22 Remington rifle from the Rhode Island State Crime Laboratory and several Colt .45 pistols from the Suffolk laboratory.

The findings were:

> Markings on the .22 caliber cases were illegible due to the hard brass used in their manufacture, as well as the fact that the case is impacted multiple times in a single firing cycle by the firing pin and bolt face. The combination of variations in impact points, due to manufacturing tolerances and overlap with other marks on the firing pin and bolt, make recovery of the microstamp improbable even with multiple cases from the same incident.
>
> Microstamps with large numbers of characters were not reproduced on fired cases in initial testing and the remainder of the testing was done with 8 character microstamps. This number is insufficient by itself for containing the information desired, and characters of the size used are too large for additional characters to be added given the size limits and geometry of a firing pin tip.[4]
>
> The quality of the impressions was negatively impacted by the normal cycling of the firearm. The causes include multiple firing pin impacts, firing pin drag during extraction, and anvil marks from the internal primer anvil. The result was a recovery rate of a little over 50% - with oversize characters.
>
> The microstamp is easily removed without negatively affecting the performance of the firearm. Removal/replacement of a Colt firing pin takes about 1 minute with a ballpoint pen as the only tool. The microstamp was removed using a 50 year old home sharpening stone and a portable drill. It took a under 15 seconds. Although the characters are only .001 inch in height, the inertial firing pin could have been shorted by at least .030 inch without affecting its performance.
>
> The firing of a thousand rounds through a Colt pistol resulted in the softening of the sharpness of the microstamp characters on the firing pin tip due to peening. No attempt was made at recovery of the image on these fired cases.
>
> The vendor has suggested that the problem of firing pin replacement/defacement would be countered by microstamping other parts that come into contact with the

[3] Krivosta, George. (2006). *NanoTag™ Markings From a Different Perspective.* AFTE Journal 38(1) 41-47.

[4] Using the automotive ISO Standard VIN number as a model, it would require between 16 and 19 alphanumeric characters to contain the information required by this proposal.

> cartridge case. As no samples were available, no testing was done. In addition to the problem of replacement/defacement of these parts, cartridge material, be it brass, steel or aluminum, is significantly harder than primer caps and thus considerably more resistant to stamping.

This research has demonstrated that dealing with firing pin marks is difficult in any circumstance. This problem is best summarized by the closing sentence in Mr. Krivosta's article:[5]

> Certainly, this research has shown that implementing this technology will be much more complicated than burning a serial number on a few parts and dropping them into firearms being manufactured.

Testing at the University of California, Davis resulted in the same conclusion:[6]

> At the present time, therefore, because the forensic potential has not been fully assessed, a mandate for the implementation of this technology in all semi automatic handguns sold in the State of California is counter-indicated. Further testing, analysis and evaluation are required.

RECOMMENDATION

This legislation should not be adopted. This system is clearly "not ready for prime time". While the concept of microstamping would appear to offer a powerful forensic tool, substantial further development is necessary to establish both the technical viability and economic sustainability of the proposed system. Testing has been limited to firing pin impressions, small samples, and short time periods. This is a single vendor proposal and does not reflect benefits that could be gained through a competitive process.

This can best be accomplished at the federal level with competition between vendors, based on best practices, being more likely to result in the emergence of an effective system. This would result in one technology and a standardized numbering system, similar in concept to the VIN system implemented in the automobile industry in 1980. Implementation at the state level is unlikely to be functionally or economically viable.

We agree with the National Research Council:

> Microstamping may indeed be a viable future for firearms identification, and we strongly encourage continuing research in this area. However, we do conclude that state and federal law enforcement would be better served by new technologies and systems developed through richer and more open competitions, by multiple vendors and research teams and with fuller appreciation for the integration of new systems with existing manufacturing practices.[7]

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[5] Id., at 47

[6] Howitt, D., Tulleners, F. and Beddow, M. (2008), *What Micro Serialized Firing Pins Can Add to Firearm Identification in Forensic Science: How Viable Are Micro-Marked Firing Pin Impressions as Evidence*. Forensic Science Graduate Group, University of California, Davis. 11

[7] National Research Council (2008). *Ballistic Imaging.* Committee to Assess the Feasibility, Accuracy and Technical Capability of a National Ballistics Database. Washington, DC: National Academy Press. 271

POSITION STATEMENT

A6252/S2741, A3200/S2953 & S0342
ENCODING AMMUNITION & REGISTERING SALES

THE CONCEPT

The purpose is to establish an investigative linkage between a bullet recovered at the scene of a firearms incident and the original purchaser. All bullets, in loaded ammunition or marketed separately as components, that are usable in handguns and/or assault riles would be encoded with a marker that uniquely identifies the box or package in which it is intended to be delivered to the final purchaser. Using the proposed technology, the marker would be etched multiple times by laser on the base of the projectile. This identifier would then be coded on the exterior of the box or package so as to be readable visually or by a bar code reader at the point of sale.

OUR POSITION

This legislation should not be enacted. The technology is not commercially viable and the utility of the end product limited, at best.

This technology has not been sufficiently developed to mandate its use in a production environment. The implementation of emerging technologies, even on a limited basis, requires the use of the best standards process for demonstrating reliability and cost effectiveness. While this proposal may sound simple in concept, a closer examination shows that there are major questions that must be addressed and consequences to be considered before determining the viability of the proposed legislation.

Description of the technology.

The technology proposed for the implementation of this process calls for microengraving an alphanumeric code, repeated multiple times, in an array covering the base of the bullet – the part presumed most likely to avoid damage upon impact. The firm advocating this system, Ammunition Coding System[1] (ACS), claims that the code can be recovered if as little as 20% of the bullet base remains intact. ACS maintains that recovery would require no special training or equipment.

There is, however, no currently available equipment manufactured for microencoding or engraving a unique identifying mark on bullets in a production environment. ACS holds a patent on the system design but does not manufacture, sell, or service equipment to implement it. The principals in this firm, whose background is in real estate, also hold a patent on cast metal fixtures for installation on steps, ledges and benches that protect them from damage inflicted by skateboarders. ACS originally shared offices with the firm that markets these fixtures, Ravensforge Coneg[2].

[1] Ammunition Coding System, 10002 Aurora Ave N, Seattle WA 98133, www.ammocoding.com
[2] Revensforge Coneg LLC, 4742 42nd Ave SW, Seattle WA, 98116 www.ravensforgeconeg.com

ACS's principal activities have been to establish a web site, www.ammocoding.com, publicizing the technology and to retain the governmental lobbying/public relations firm, Gordon, Thomas, Honeywell[3] (GTH). GTH has established a second website, www.ammunitionaccountabiltiy.org, promoting legislation mandating the microencoding of ammunition. Legislation was introduced in 18 states during the 2008 legislative year, but none has been enacted. This web site does not identify its relationship with ACS or GTH. What ACS and GTH are doing is promoting legislation to compel the use of ACS's patented technology, for which no production equipment has ever been built, with the intention of collecting royalties on its use. When queried on this point, principal Russ Ford replied:

> "Some protection is afforded inventors everywhere that have come up with ideas"[4]

This is an effort to mandate through legislation the implementation of an utterly unproven concept that would enrich the sole patent holder regardless of its success or failure.

Does the technology work? Can a bullet be uniquely encoded and the code retrieved after firing with a high degree of reliability?

The proposed system mandates the use of a single vendor system architecture employing a technology that has never been utilized in a production environment. No manufacturer has marketed a system for the microencoding of bullets. The efficacy of the proposed technology itself has never been the subject of peer-reviewed studies by qualified forensic professionals. While the proposal has had coverage in the popular press, it has not been the subject of any articles in relevant professional publications. This is an immature technology that clearly requires further research and testing.

Can the proposed system be economically implemented and operated?

We believe that the answer is no. The proposal would saddle the entire industry, and ultimately consumers, with unsustainable costs. Government would also face increased expenses separate from the administration of the system as law enforcement purchases between 7 and 10 percent of the civilian ammunition produced in the United States

The specific processes followed by each manufacturer vary, but they all use modern manufacturing processes to maintain the highest possible productivity consistent with safe operating practices. Bullets are typically produced in batches, held in bulk, and fed to the loading operation as needed. A specific bullet may be utilized in more than one product. FBI research in an unrelated study[5] found that a single box of ammunition could contain bullets from as many as 14 compositional groups.

Ammunition is loaded in lots of up to 1 million rounds with the bullets being fed into the loading machine in bulk. As this obviously involves the presence of potentially explosive primers and highly flammable propellant, the introduction of laser etching at this point would be a major safety issue. Manufacturing ammunition in lots of 20 to 100 rounds, as

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[3] Gordon, Thomas, Honeywell, Wells Fargo Plaza, Tacoma WA 98401 www.gth.com
[4] Laura Onstot, (2008, March 5). *Three Seattle Guys Want to Bar-Code Bullets*. Seattle Weekly
[5] National Research Council (2004). *Forensic Analysis Weighing Bullet Lead Evidence*. Committee on Scientific Assessment of Bullet Lead Elemental Composition Comparison. Washington, DC: National Academy Press.

this proposal would require, would mandate a very costly reengineering of production facilities, essentially replacing the efficiencies of mass production with piecework.

The development and operation of a system to track each box of ammunition or bullets from the point of manufacture to retail purchase would be a massive endeavor with significant logistical costs incurred at each step. Civilian ammunition sales in the United States exceed 10 billion rounds per year. A database to track each box of ammunition would contain well over 600 million records for each year. And this is a product with a shelf life of decades.

The development and operation of a massive data collection and storage system would be required in both the commercial and government sectors.

Manufacturers would be required to register with the New York State Police (NYSP) and would be required to maintain records of all sales or transfers to, from, or within New York State. The specific information to be retained is not specified in the proposed legislation but would be prescribed by the NYSP. The records retention period would be 7 years.

Retail vendors would also be required to register with the NYSP. For each ammunition or bullet sale, the vendor would be required to record the purchaser's name, date of birth, driver license number (or other government issued identification), as well as the identifier from each ammunition or bullet package. This information would be registered with the NYSP. The vendor records retention period would be 3 years.

No provision is made for jobbers, wholesalers, or any other intermediary.

The NYSP would be responsible for establishing and maintaining a database containing the vendor sales information and ammunition coding data. Access to the information would be restricted to law enforcement personnel and released only in connection with a criminal investigation. No retention period is specified for this database.

New York State's costs would, in theory, be covered by a $.005 per bullet tax.

Possession or sale of non-coded ammunition would be illegal after a grace period of about one year (Class A Misdemeanor). The A6242/S2741 does not provide an exemption for law enforcement or other governmental purchases.

Will the system provide useful information to law enforcement?

The potential for providing useful information is, at best, very limited. The functionality of the system is dependent upon the perpetrator being the retail purchaser or an identifiable associate of the purchaser. As such individuals are more likely to obtain their supplies through theft, abandonment, or underground sales, this is problematic. Anyone seriously desiring to evade the system could easily do so by defacing commercial ammunition or making his or her own bullets. Coupled with the vast supply of unencoded ammunition already in the public domain and the limited potential for providing useful information to law enforcement even if the system works as intended, this does not appear to be an effective investigative tool. At the end of the day, ammunition is a fungible item, not amenable to tracking on a unit basis.

How will this effect private individuals who handload their own ammunition?

Thousands of shooters load their own ammunition in order to reduce costs, improve performance, or produce loads not commercially available. They either purchase bullets from a variety of manufacturers, large and small, or make their own. There is no provision in this proposal for these practices other than to register as a manufacturer with its record keeping and reporting requirements.

RECOMMENDATION

These bills should not be enacted.

The microencoding of bullets has not been demonstrated to be a viable technology. There is no equipment manufactured to implement it on a production scale and the technology itself has not been subject to any peer-reviewed study by qualified forensic professionals. It can at best be considered an emerging technology requiring research employing a mature scientific methodology before any determination can be made as to its effectiveness. At present, even if the functional issues are addressed, the economic impact of scaling up to a production environment is staggering.

The National Research Council touched on these issues in its review of ballistic imaging:

> However, it is also abundantly clear that substantial further research would be necessary to inform a thorough assessment of the viability of microstamping either gun parts or bullets. Particularly necessary would be credible estimates of the real cost of implementation, separating initial configuration costs from other life-cycle costs, that accurately take into account the reengineering of existing firearms and ammunition production lines.[6]

This is clearly an attempt to legislate an ideal based solely on the unproven claims of a single vendor who does not yet have an actual product.

[6] National Research Council (2008). *Ballistic Imaging*. Committee to Assess the Feasibility, Accuracy and Technical Capability of a National Ballistics Database. Washington, DC. National Academy Press

POSITION STATEMENT

A2882A, A2914, A4618, AND A6030
ENTRY OF EVIDENCE EXHIBITS INTO CoBIS &
ADD NEW DATABASES
A3477/S1188 & A5695
ADD RIFLES AND SHOTGUNS TO CoBIS
A5427 & A6388/S1152
ELIMINATE CoBIS

HISTORY

Ballistics imaging technology is one step in the ongoing application of new technologies in the management and analysis of ballistics evidence. Firearm examiners have historically maintained a file of evidence from open cases and referenced it when evidence from a new crime with the potential for a linkage came into their hands. In the 1970's development began of databases to roughly classify evidence and narrow the scope of manual searches. Manually comparing any significant number of items was time consuming and usually reserved for the most serious cases. In the 1980's, work was begun on systems that would further narrow the number of items requiring manual analysis by utilizing computer-based image processing to search a large number of exhibits and identify potential matches.

THE CONCEPT

In evaluating firearms identification, it must be remembered that it is ultimately a subjective assessment of the examiner as to the quantity and quality of the markings and the decision of what does or does not constitute a match comes down to a individual determination based on his or her experience. The random nature of the forces and motions in the firing process, exacerbated by wear and tear, have to date precluded the derivation of an objective and statistical basis for reaching a decision or the estimation of error rates.

The lack of a statistical measure of uniqueness and reproducibility does not mean that markings are completely random and volatile. Individual firearms do leave marks on both cartridge cases and bullets that can permit an examiner to meet a baseline standard for the acceptance of ballistic evidence.

The Association of Firearms and Tool Examiners (AFTE)[1] recognizes the subjective in nature and requires two extrapolations:

> First, that marks are sufficiently consistent with true matches known to have come from the same tool, and, second, that the quality and similarity of corresponding features exceed the best known apparent agreement demonstrated between tool marks known to have been produced by different tools.

[1] An AFTE Criteria for Identification Committee Report (1992) Journal of the Association of the Firearm and Tool Examiners. 24:336-340

This remains a difficult task and is based on the subjective judgments of skilled examiners with a knowledge base built on both training and experience. The problem with the introduction of imaging technology is this lack of a precisely defined process.[2]

Current digital imaging technology provides a useful tool for quickly categorizing and sorting large number of specimens. The use of computer imaging has made it easier to maintain and search ballistic evidence files. It is less reliable for distinguishing the fine detail that would be necessary for matches of an investigative, much less evidentiary, value. Ballistic imaging is not firearms identification - it is perhaps best described as a tool to assist the firearms examiner.

Implementation of the technology has follow two different approaches:

In the first, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) operates the National Integrated Ballistics Information Network (NIBIN). The purpose of the system is to link together evidence from separate crimes in order to provide investigative leads. Growing out of efforts begun in the early 1990's, rollout of the system began in 2001. This is a joint program with the federal government providing the equipment, network, and system management and the local agencies providing staffing. NIBIN currently (April 2008) has 174 local agencies and 203 sites. New York has seven sites comprised of six county laboratories and the State Police Forensic Investigation Center. Interestingly, New York City is not a NIBIN participant and operates its own facility.

The system contains only evidence recovered from crime scenes or test fired from seized weapons.[3] The system enables the partner agencies to enter exhibits and conduct searches on a local or regional basis. While searches can be conducted nationally, this is not the normal case. While a system of this breadth and complexity did not go in without problems, technical and procedural changes based on experience have made NIBIN an effective tool for its intended purpose – providing firearm examiners with the ability to review exhibits over a multi jurisdictional environment and produce investigative leads that would otherwise not be possible.

A National Research Council study has confirmed the soundness of the concepts underlying NIBIN.[4] Since its inception, over 1,250,000 pieces of crime scene evidence have been entered, resulting in over 25,000 hits. Many of the investigative leads produced would not otherwise have been realized. NIBIN represents the successful implementation of an emerging technology to enhance the forensic sciences.

In the second approach, the State of New York established the Combined Ballistic Identification System (CoBIS) in March 2001[5]. The purpose of this system is to identify

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[2] National Research Council (2009). *Strengthening Forensic Science in the United States*. Committee on Science, Technology, and Law Policy and Global Affairs. Washington DC: National Academy Press. 5-21

[3] The Firearm Owners' Protection Act of 1986 (18 U.S.C. § 926) prohibits the entry of non-crime exhibits.

[4] National Research Council (2008). *Ballistic Imaging*. Committee to Assess the Feasibility, Accuracy and Technical Capability of a National Ballistics Database. Washington, DC: National Academy Press. 162.

[5] Maryland instituted a similar system in September 2000. The statements about CoBIS apply equally to this system, known as MD-IBIS.

the firearm and provide investigators with a link to the original purchaser. Operated by the New York State Police (NYSP) at their Forensic Investigation Center in Albany, the database is comprised of sample fired cartridge cases that are required to be provided for each new handgun delivered in New York State. While CoBIS and NIBIN use the same equipment, they are operated as physically separate systems due to the NIBIN restriction prohibiting non-crime exhibits.

Any law enforcement agency in the state can submit an exhibit for comparison against the database. In addition to exhibits submitted by other agencies, exhibits provide by the ATFE from NIBIN on a one way basis have been run against CoBIS. At this point, only one unconfirmed hit has been found. Given that all of the firearms in the database represent purchases by license holders or law enforcement, this is not very surprising. Most importantly, usage by local agencies has been very limited. While there is no direct charge for using the system, all exhibits have to be sent to Albany, exposing active case evidence to the risk of loss and chain of custody issues. CoBIS represents the result of pushing a technology beyond its current limits.

OUR POSITION

We recognize that no investigative tool will be effective in every situation and that the implementation of a complex technology will encounter some teething problems. It is also recognized that this is an open-ended question. Ongoing improvements in both operational protocols and the technology itself will surely require that these issues be revisited. Our concern is that they be evaluated in a manner that insures the application of best practices and is done in a cost effective manner.

CoBIS has not achieved its intended objective and should be terminated.

CoBIS was developed as a reference ballistic image database (RBID), unitary in nature, that would house a large number of exhibits. This results in a large database comprised of exhibits that are nearly identical except in very small details. The technology has not proven itself capable of making the needed distinction. This represents an attempt to detect what is essentially a low-base-rate phenomenon in a population that is, by definition, composed of nearly identical specimens. Any subset of potential matches would be too large to be of use in the manual comparison needed to determine if a true match exists.

NIBIN is an evidentiary database, geographically managed and leveraging the system's capability of classifying and sorting to produce manageable subsets of potential matches. The ability to partition the database and structure searches to meet the investigative needs of the user makes this a productive and cost effective tool. This technology, that is effective at relatively small database sizes, does not scale up to large systems.

This problem was recognized by the National Research Council in reaching their conclusion that "a national reference ballistic image database of all new and imported guns is not advisable at this time".[6] The arguments against a national RBID can also be

[6] National Research Council (2008). *Ballistic Imaging*. Committee to Assess the Feasibility, Accuracy and Technical Capability of a National Ballistics Database. Washington, DC: National Academy Press. 239

applied to a state RBID. The implementation of CoBIS has proven to be premature. The technology provides the rough categorization and sorting effectively employed in NIBIN but has not been capable of distinguishing and processing the fine, exhibit-specific marks required for identifying potential matches in a large database.

There certainly should be no expansion of CoBIS in terms of the types of firearms included.

The inclusion of rifles, either in their entirety as a class or in a subset, would impose a colossal disruption in the sale of sporting arms as well as a massive increase in cost for both the sportsman and the State of New York. At the same time, there is no clearly established investigative benefit. While state and federal law insures that handguns legally acquired by New York State residents are entered in CoBIS by requiring delivery through a New York dealer, no such legislation applies to long guns. Evasion, if only for economic reasons, is likely to become the norm.

All of the above applies to the inclusion of shotguns with some additional caveats:

> Shotgun primers are of a different design and made of steel rather than brass, as are rifle and handgun primers.
>
> Shoguns operate at pressures in the 9,000 to 11,000 psi range as opposed to the 25,000 to 40,000 psi range for handgun. Rifles can go as high as 65,000 psi.

Given the harder material and lower pressure, shotguns are not likely to produce usable images. We have seen no testing of ballistic imaging applied to shotguns.

The content of CoBIS should not be expanded to include evidence exhibits.

CoBIS is intended to be a RBID and the addition of evidence exhibits muddies the water with no benefit. As the purpose of CoBIS is to identify a firearm from a fired cartridge case, the entry of exhibits from firearms that are in hand is completely pointless. NIBIN was designed to process evidence exhibits and is structured to do so effectively. Exhibits from unknown firearms should be matched against CoBIS for the purposes of identifying the firearm. All crime exhibits should be entered in NIBIN.

Summary

We oppose the inclusion in CoBIS of rifles, shotguns, or any subset of them. This would incur a great deal of expense and aggravation for little or no investigative benefit.

We oppose the entry of crime source exhibits in CoBIS. This is not its purpose and degrades its use as a testbed. Evidence exhibits should only be matched against CoBIS. NIBIN is the system for processing evidence.

As it has been proven both costly and ineffective in its intended purpose, we support the prompt termination of CoBIS as proposed in A5427 and A6388/S1152.

POSITION STATEMENT

A1093/S1715
IMPOSITION OF RESTRICTIVE PRACTICES ON GUN DEALERS

CONCEPT

In an effort to reduce illegal trafficking in firearms, the proposed legislation would impose extensive new requirements on dealers for the storage, display and sale of firearms. In addition, the state police would be given the power to issue additional requirements without legislative approval. New business practices would be mandated for insurance, staffing, training and record keeping. While the proposals are expansive in scope, there is little justification for their implementation. New York's handgun licensing laws virtually eliminate "straw man" purchases of handguns, usually the primary concern when addressing diversion. Many of the "new" mandates are redundant with existing state and federal law or long established industry practices. Nothing in this proposal addresses the illegal underground market, the primary source of crime guns.

POSITION

This proposal duplicates existing federal procedural and record keeping requirements and imposes restrictions with no demonstrable potential for preventing harm or injury that would justify a legitimate state interest. Accordingly, it should not be enacted.

This proposal adds a new Article (Article 40) to the General Business Law (GBL) nominally directed at preventing the sale or other diversion of firearms, rifles, and shotguns from licensed dealers to criminals. It is the contention of the sponsors that poor business practices or intentional evasion of the law by "rogue dealers" or the employees of otherwise responsible dealers are the cause of large numbers of these diversions.

S. 900 contains definitions for the purpose of the Article. These include an overly broad definition of a "gun show", which appears to have no purpose in this Article. Perhaps this is intended as a precursor for other legislation directed at restricting or eliminating gun shows.

S. 901 is directed at developing measures to prevent sales and transfers to criminals. As the transfer of handguns is already tightly restricted by the licensing system, this is presumably directed at the transfer of rifles and shotguns through straw purchases. As sales of this type have been the target of both public and dealer directed programs developed by the Bureau of Alcohol, Firearms, and Explosives (ATFE) and the National Shooting Sports Foundation (NSSF) since 2000, this seems redundant. A straw purchase is already a felony under the Gun Control Act of 1968[1]. This proposal adds nothing of substance to existing efforts.

[1] 18 U.S.C. § 922(a)(6)

S. 902 mandates that a dealer carry insurance of at least $1 million against liability for damage, injury, or death resulting from the sale of a firearm, rifle, or shotgun. It is not clear what tort would produce this liability. General business insurance would cover negligence and it is highly unlikely that an insurance company would write coverage for damages for an occurrence in which the policyholder is not a participant, is not negligent, and therefore bears no liability under law. Despite the sponsor's claims to the contrary, it is not clear whether or not this bill is intended to create an additional cause of action.

S. 903 requires that all firearms, rifles, and shotguns be kept in locked cases and only removed singly for customer examination. Outside of business hours, all firearms, rifles, and shotguns are to be kept in a vault. Ammunition would be stored separately and made inaccessible to customers. This proposal presumes that dealers currently have no regard for the security of their inventory and no concern for their own or their customers' safety.

This proposal adds nothing to public safety. These are retail businesses that are used to taking the same security precautions that any dealer in valuable or potentially dangerous merchandise would take. They wish to do so in a manner that allows them to deal with their customers in a comfortable environment that does not suggest that they are engaged in an illicit activity.

S. 904 requires the exclusion of individuals less than 18 years of age from premises where firearms, rifles, shotguns, or ammunition is sold. This would require obtrusive access control and/or age validation procedures and it is not clear to what purpose.

S. 905 provides that dealers may only sell or transfer firearms, rifles, or shotguns at the location listed on the dealer's license or at gun shows. This is redundant as this restriction is already in federal law.[2]

S. 906 establishes a minimum age of 21 and training requirements for employees covering the compliance with the law, instruction of customers, and affixing required labels. Records of all training would be required as specified by the Superintendent of State Police. This proposal establishes mandates and imposes unnecessary costs for what any businessperson does in the course of normal operations. Compliance with the law and communicating with customers requires neither mandates nor record keeping.

S. 907 entails the dealer completing a number of steps prior to completing the transfer of any firearm, rifle, or shotgun:

> Complete instant background check via the National Instant Background Check System (NICS). This requirement is redundant, as it is required by federal law.
>
> Provide the customer with a gun locking device. This requirement is redundant as it is already required by Sec. 396-ee of the GBL.
>
> Demonstrate the functioning of the firearm, rifle, or shotgun. This is pretty much a standard practice of the sales function and is backed up with a user's manual.

[2] 18 U.S.C. § 923(a) and (j)

Provide the purchaser with the mandated federal safe storage warning notice. This requirement is redundant, as it is required by federal law.

Provide the purchaser with a bill of sale. This is a standard business practice and gains nothing from codification.

Obtain a signed statement from the purchaser that he or she has received all the specified notices and instruction. Again, paperwork with no discernable purpose.

The requirements in this proposal are either redundant, as they are mandated by existing law, or represent an effort to impose bureaucratic overhead on what are customary business practices.

S. 908 provides for the maintenance and retention of records that duplicate records that the dealer is required to maintain under federal law. All of the information specified in the proposal (and then some) is included either in the dealer's file of completed Firearms Transaction Record (ATF Form 4473)'s or ATFE "bound book"[3]. Form 4473 must be retain for 20 years and the bound book for the life of the business and surrendered to the ATFE if the dealer's license is surrendered. The requirements of this section are completely redundant with the requirements of federal law.

It has been contended by the sponsors that ATFE examinations of dealers has uncovered thousands of "missing" firearms, rifles, and shotguns. In fact, the vast majority of these have been determined to be record keeping errors. It must be remembered that until a few years ago, the federal regulations required handwritten records. Now that AFTE approved automated systems are available and are being installed, errors have been significantly reduced. By way of comparison, a 2001 audit of the Federal Bureau of Investigation disclosed that 449 of the agency's 50,000 firearms had either been lost or stolen, including fully automatic weapons.[4]

S. 909 requires to the dealer to provide access to all records involving firearms and employee training to any law enforcement agency with or without any established investigate need. This would allow fishing expeditions, such as that conducted by the City of New York, in the hope of discovering material to support a political agenda.

This section also includes a requirement that dealers assist law enforcement. Any dealer, regardless of legal requirements is going to assist law enforcement with legitimate investigative needs. It is not, however, the function of dealers to perform data analysis and trend tracking. That is an ATFE function.

The requirement to report trace information to the manufacturer is completely redundant, as the manufacturer is where the ATFE trace process starts. When a trace is requested by a law enforcement agency, the ATFE contacts the manufacturer to determine the distributor or dealer to whom the firearm was shipped.

S. 910 requires each dealer to implement procedures to insure compliance with all state and federal laws and report annually to the Superintendent of State Police that he or she

[3] 27 C.F.R. 478.121 and 478.125
[4] FoxNews.Com (07/18/2001) *Senate Blasts FBI Loss of Computers, Weapons*

has done so. We know of no other industry that is required to state each year that they are legal.

S. 911 allows the Superintendent of the New York State Police (NYSP) to implement whatever regulations he or she deems necessary to prevent the diversion of firearms, rifles, and shotguns from legal commerce. We believe that this gives the Superintendent much too broad authority to issue regulations without legislative oversight.

The enhanced powers and responsibilities assigned the NYSP by S.910 and S. 911 would require the establishment of an entirely new functional group, which would duplicate the existing responsibilities of the ATFE. There is nothing to be gained by this redundancy and the function should be ceded to the federal authorities.

RECOMMENDATION

The stated purpose of the proposed legislation is to reduce trafficking in illegal guns and make it more difficult for criminals to obtain firearms, rifle, and shotguns from legitimate dealers. While laudable in intent, the proposed legislation focuses on the wrong part of the supply chain.

The proposed legislation creates obstructions to the lawful operation of gun dealers and presents pointless obstacles to their customers.

Many of the requirements are redundant, duplicating records or actions required under existing state and federal law. Some of these appear designed solely to require costly duplication by imposing a slightly different form or report.

Other mandates create bureaucratic overhead with no clear relationship to a legitimate state interest.

The sponsors purport that state and local governments will realize substantial savings due to anticipated reductions in firearms related crime. Since this proposal would have no effect on the criminal classes and it would, in fact, increase state expenses due to the establishment of redundant regulatory functions

This legislation should not be enacted.

A5696C/S6676 & S4456A
BACKGROUND CHECKS FOR EMPLOYEES OF DEALERS

CONCEPT

This proposal would require that all employees of a gunsmith or dealer in firearms submit to a background check in the form of a National Instant Check System (NICS) check. This would entail the prospective employee completing an application for submission by the dealer to the Division of Criminal Justice Services (DCJS). DCJS would then run a NICS check and if the individual passes, issue an employment certificate. Existing employees must be checked within six months of enactment. Individuals holding a license under Section 400.00 or 400.01 would be exempt.

It is not clear to what purpose this requirement is intended. The justification stated is that since customers are required by federal law to submit to a National Instant Check System (NICS) check prior to taking delivery of a firearm, dealer employees should also undergo some form of check.

POSITION

This bill should not be enacted, as it doesn't address any defined problem or failure of the existing regulatory structure. It appears to be a solution in search of a problem.

Dealers are already quite careful who has access to and handles firearms.

Dealers are well aware of the necessity for prudent business practices when handling potentially dangerous merchandise. It is the dealer who is ultimately responsible, both morally and in law, for failure in his or her business practices. They are, by necessity, quite careful as to whom they employ in positions of trust.

There will be a cost to both the dealer and the state.

This proposal would create another form and another set of records to be maintained by the dealer and, presumably, inspected.

The sponsor states that there will be no fiscal impact on the state. How the DCJS is going to set up a procedure for receiving, processing and recording applications and a system for issuing certificates at no cost eludes us.

There is no mention of any fee that might be imposed by DCJS or any other state agency. Given the fact, as stated above, that there will undoubtedly be costs incurred by the state in the administration of this system, the amount of any such fee should be fixed and the amount stated in the proposed legislation.

This bill is not clearly written and the sponsors seem to have little comprehension of firearm sale procedures.

We question whether or not this is permitted under current federal regulations that limit the use of the NICS system by state and local criminal justice agencies are limited to use in permit or license processing involving firearms or explosives. See 27 CFR §25.6(a) and 27 CFR §25.6(j)(1). This is an attempt to disguise an employment check as a license. The use of the NICS for performing background checks of employees was specifically precluded under federal regulations.

One of the purposes in licensing dealers in firearms is to make certain that a competent entity or individual is responsible for the operation of the business and ensuring compliance with all legal requirements. This proposal is, in effect, redundant.

RECOMMENDATION

As stated above, this is truly a solution in search of a problem. There does not appear to be any specific difficulty that is being addressed, merely that employees, who handle firearms in a narrow and closely managed environment, should undergo a background check because firearms purchasers, who take actual possession of the firearms, are required to do so.

There is no statement of what failures or potential failures in the existing regulatory system are being addressed. This is a poorly drafted bill that seems designed primarily to impose a financial and regulatory burden a specific type of business for no legitimate governmental purpose.

This legislation should not be enacted.

POSITION STATEMENT

A6157 & A6294/S4084
PROHIBIT POSSESSION OF ASSAULT WEAPONS

CONCEPT

This legislation would prohibit the possession of semi-automatic and pump action rifles, semi-automatic shotguns and semi-automatic pistols that have certain cosmetic characteristics that the sponsors deem would pose a threat to public health and safety. These guns are referred to by them as "assault weapons" and declared to be military weapons with no legitimate sporting use. This is, in fact, an attempt to impose restrictions on the shooting public, based on characteristics that the sponsors find objectionable without regard to their functionality and legitimate sporting use.

POSITION

The proposed legislation should not be enacted. It is based on misinformation, misrepresentations, and an absence of technical knowledge. The purpose appears to be to fan public emotions in order to elicit support for restrictive gun control legislation and to bolster long-term efforts to severely restrict or ban all privately held firearms. The objective here is to create an illusion that these disfavored firearms, which are in reality a normal evolution of the sporting rifle, pose a grave risk that merits the compromise of a Constitutional right.

Definitions

While there is no agreed on definition of the term "assault rifle", the following definitions will serve for use in this document:

A semi-automatic rifle or shotgun is a shoulder weapon that fires a single shot with each pull of the trigger and is intended for civilian sporting or self-defense use. Rifles and shotguns are defined in the Penal Law[1]. Dealer sales must comply with federal law[2].

A semi-automatic pistol is a firearm that fires a single shot with each pull of the trigger and is intended for sporting or self-defense use by private citizens. Possession requires licensing under New York State law[3], as well as complying with federal law as above.

An assault rifle is a fully automatic military weapon intended for use as a standard infantry rifle. These weapons are already illegal in New York State for all but law enforcement and military use[4]. They are also tightly regulated under federal law by the National Firearms Act (1934)[5] and the Gun Control Act (1968)[6].

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1 P.L. § 265.00(11) and (12)
2 18 U.S.C. § 922(t)
3 P.L. § 400
4 P.L. § 265.02
5 26 U.S.C. § 5845(a) and 5861
6 18 U.S.C. § 922(d)(3) and 922(o)

Assault pistols and assault shotguns are functionally meaningless terms as they merely reflect cosmetic features that the sponsors of the legislation find objectionable. There is no mechanical or functional difference between guns so labeled and other guns of the same mechanical design or type.

History

The first semi-automatic rifle was introduced in Europe is 1885, the first semi-automatic pistol, also in Europe, in 1892. The first semi-automatic shotgun appeared on the market in both Europe and the United States in 1900. All were commercial products, designed for and sold in the civilian market. While the most military organizations adopted the semi-automatic pistol in the first decade of the 20th century, semi-automatic rifles and shotguns remained civilian products. Other than prototypes or privately purchased weapons, semi-automatic shoulder arms were not employed by any major military organization until the United States adopted the M1 Garand in 1936.

The first military weapon that could be called an assault rifle was the Russian Federov Avtomat, introduced in 1916. Only about 3,000 were manufactured but they were used in the Russian Civil War, making it the first combat appearance of the assault rifle. The assault rifle in its current form first appeared in World War II. Germany introduced the StG.44 in 1943 and the Soviet Union followed with the SKS in 1945 and the AK47 in 1947. The United States adopted the M16 in 1963 and received the first deliveries in 1964 – at the same time that the semi-automatic AR-15 came on the civilian market.[7]

What is clear is that semi-automatic rifles have been part of the civilian firearms market since their inception and, in fact, preceded any military use. As in other disciplines, the interchange of technology between the civilian and military sectors is normal. Government investment in the development of small arms for the military produced technologies, engineering, and materials that were naturally transferred to the civilian sector where accuracy, reliability and flexibility are equally in demand in sporting firearms.

The firearms affected by this legislation are legitimate sporting firearms.

The proposal makes no attempt to determine the nature or purpose of specific firearms but makes judgments based on perceptions. It wipes out the exemption for firearms that had already been determined to be sporting arms under the now defunct federal ban. It also gives the Superintendent of State Police the sole authority to determine what semi-automatic rifles and shotguns are to be determined as not to have a sporting purposes and thus prohibited.

Semi-automatic and pump action rifles and shotguns are widely used for hunting, formal and informal target shooting, and personal defense. Rifles labeled as “assault weapons” are, in fact, the most commonly used rifles in local and national centerfire rifle marksmanship competition. They are modern sporting rifles employing technological developments that first appeared in military firearms. Many of the features that this proposal finds objectionable have been in regular use by hunters and competitive shooters for many years.

[7] The “AR” stands for the Armalite Corporation, the developer of the rifle, not “assault rifle”.

Several pistols used in competition from local level to the Olympic Games would be banned[8]. These pistols commonly use magazines outside of the pistol grip to maintain a desired balance and allow full customization of the grip. Muzzle brakes or compensators are frequently used to prevent disturbance of the sight picture during timed events.

This is an attempt to ban features on a cosmetic basis regardless of functionality.

No military assault rifle, in the past or currently in service, has a thumbhole stock, yet this proposal would ban them. Telescoping stocks allow easy adjustment of stock length to fit different individuals, shooting positions or clothing. The ban on folding stocks has no real world effect, as the minimum length of rifles and shotguns under federal law is 26 inches; any stock on a handgun is already prohibited by federal law and has been for past 65 years[9].

Muzzle brakes or compensators are frequently used on all types of rifles, manual and semi-automatic, to enhance accuracy as well as to reduce perceived recoil. Their use on pistols is pretty much limited to competition pistols, as they are not practical for service or defensive handguns.

The use of barrel shrouds on semi-automatic rifles and handguns is purely a cosmetic feature. Firing these guns with a hand wrapped around the barrel is not conducive to accuracy. It serves only as a media stunt.

This legislation proposes to ban features purely on the perception of the authors of this legislation, irrespective of the actual function. They wish to ban what they perceive as "ugly rifles".

These firearms are not "high powered weapons of war".

Power is a function of the ammunition used and semi-automatic firearms use the same ammunition as other sporting firearms. Those rifles characterized by the proposed legislation as "assault weapons" are most commonly chambered for intermediate power cartridges.

Nor are these firearms "weapons of war". The semi-automatic sporting firearms that would be impacted by this legislation are functionally identical to all other sporting arms and are differentiated only by the perception of cosmetic or legitimately functional features. Technological innovation has altered their appearance, not their function.

There is no indication of increased criminal use of the firearms targeted by this legislation.[10]

The overall homicide rate in the United States has been stable for the last 10 years and is roughly the same as in the decade following World War II. The drop in homicide rates from the high levels reached of the 1980's is primarily due to a drop in handgun homicides. The use of rifles of all types in homicides is less than it was 25 years ago.

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[8] International and Olympic rules are available at www.shooting-issf.org and United States rules are at www.nrahq.org/compete/nra-rule-books.asp

[9] 26 U.S.C. § 5845(a) and 5861

[10] All of the statistics in this section are from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. www.ojp.usdoj.gov/bjs

There was no perceptible impact on crime rates during the ten years the federal "assault weapons" ban was in effect. This was from September 1994 until it sunsetted in September 2004. Even the Violence Policy Center, a virulent anti-gun group, stated, "You can't argue with a straight face that the ban has been effective"[11]. California enacted its own statewide ban in 1989 and expanded it in 2000. Since then, it has seen its homicide rate increase by 13%, while the nation as a whole saw a 2% decline.

Homicide rates would have fallen further except for increases in murders related to the narcotics trafficking and gang violence, both juvenile and adult. Gang related homicides alone have increased eight fold over the last 25 years. The homicide rate, as well as most other violent crime rates, is significantly higher in urban areas – areas where the private ownership of firearms is most strongly discouraged. In 1907, the homicide rate in the United States was 4.9 per 100,000. One hundred years later, it was 5.6. There are always bad people who will do appalling things. They are not likely to be deterred by legislation of this type.

The Attorneys General of 23 states said, "We do not believe that further restricting law-abiding Americans access to certain semi-automatic firearms serves any real law enforcement purpose".[12]

RECOMMENDATION

This proposal would compound an already pointless, ineffective, and intrusive law and makes it worse by imposing needless restrictions on firearms owners.

> It renders illegal a large number of semi-automatic rifles that have already been determined by the federal government to be suitable for sporting purposes.
>
> Bans features the drafters find objectionable purely on a cosmetic basis.
>
> Bans functional features that have nothing to do with military weapons.
>
> It characterizes these firearms as crime weapons without any statistical evidence. In fact, the evidence indicates the contrary.
>
> Yields what should be legislative authority to the Superintendent of State Police without public input, oversight, or review.

The promotion of legislation of this type, based on erroneous definitions and misleading or false allegations, diverts attention and resources from valid public safety initiatives. There is no correlation between lawful firearms possession, regardless of type, and high crime rates. If anything, the reverse is true. This is true domestically and worldwide. This is another example of exploiting crimes where the type of firearm had no bearing on the outcome in furtherance of a broader objective – imposition of a total firearms ban, one type at a time. This legislation should not be enacted and the existing P.L. § 265.00 (22) and (23) should be repealed.

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[11] R. Montgomery (2004, May 2) *Clock Ticking on Assault Gun Ban: Flaws Put Extension in Doubt,* Kansas City Star*,* A1

[12] Letter to the United States Attorney General dated June 11, 2009

POSITION STATEMENT

A4615, A4725/S3162, A5503, A6433 & A9006A/S5932A
REGULATION OF AMMUNITION SALES

CONCEPT

The stated purpose is to restrict access to ammunition to authorized individuals and to facilitate the investigation of firearms related incidents by providing an investigative link to any possible purchasers of the type of ammunition used. Each of these four bills seeks to impose some form of restriction and/or record keeping requirement for the purchase of ammunition. Each proposal has somewhat different provisions:

A4615 amends the General Business Law (G.B.L.) to prohibit the sale of ammunition to anyone not having a pistol permit. The proposal defines ammunition as "anything hurled by a weapon". Evidence of a violation would require the Attorney General to seek a judgment enjoining continuance and a civil penalty.

As the definition of "weapon" is fairly broad, this proposal could conceivably prohibit the purchase of arrows by other than a pistol permit holder. It would certainly exclude the purchase of rifle and shotgun ammunition by other than permit holders.

A4725/S3162 & A9006A/S5962A replace the existing Penal Law (P.L.) article dealing with fireworks and dangerous fireworks. They carry forward a section from the current law prohibiting the sale of any "ammunition designed exclusively for use in a pistol or revolver to any person not authorized to possess a pistol or revolver."[1]

The problem with this section is that, given the cross use of ammunition between rifles and handguns, there is virtually no ammunition "designed exclusively for use in a pistol or revolver".

A5503 adds a new section to the G.B.L. that would require a person purchasing ammunition for any type of firearm to present a driver license or a non-driver photo identification card, provide detailed personal information, and describe the firearm for which the ammunition is intended. The dealer would be required to forward the information to the Secretary of State who would enter it in a statewide database.

Both the Secretary of State and the dealer would incur significant costs. This system would also be de facto registration of rifles and shotguns.

A**6433** amends the existing P.L. article covering firearms licenses[2] by adding a new section that would provide for an "application for the purchase of bullets". An applicant wishing to purchase ammunition for any firearm would have to complete an application

[1] P.L. § 270.00(5)
[2] P.L. § 400

requiring extensive personal data and information on the firearm for which the ammunition is being purchased. Two forms of identification would be required. Copies would be sent to "all law enforcement agencies of the state". While no specific state agency is charged with administering this system, it would pose an enormous economic and bureaucratic burden on both the agency selected and on the dealer. As with A5503, it would impose de facto registration of rifles and shotguns.

OUR POSITION

The registration of ammunition sales has been tried on a nationwide basis and has been found wanting. It provides no deterrent to the criminal classes and does not provide even exploratory leads to assist in the investigation of firearms incidents. It merely adds costs that are ultimately paid by the consumer with utterly no economic or social benefit.

The addition of reporting sales to the state and the establishment of databases compounds the folly by adding expense with no benefit to anyone to the state budget at a time of severe financial stress.

We can see only two purposes in this legislation. First, it would initiate firearms registration for rifles and shotguns through the back door when the front door has been legally shut. The specific firearm owned by a citizen should have no bearing on his or her eligibility to purchase ammunition. The stated purpose of keeping ammunition out of ineligible hands or assisting investigators is purely cosmetic.

Second, since the proponents of this type of legislation have not been able to achieve their fundamental goal of banning all private firearms, they strive to make it as difficult as possible for those who wish to own firearms to enjoy their use.

This is "dějà vous all over again". The registration of ammunition sales has been tried on a national basis and rejected.

Registration of ammunitions sales was instituted by the Gun Control Act of 1968 (GCA68). Record keeping for rifle and shotgun ammunition was repealed in December 1969. All record keeping requirements for retail ammunition sales were eliminated with the passage of the Firearm Owners Protection Act of 1986. The record keeping requirement was determined to have served no useful purpose in keeping ammunition out of the hands of ineligible persons or in providing information to investigators dealing with firearms incidents. There is no reason to believe that this has changed.

Current federal law provides adequate restrictions on the sale of ammunition.

Federal law establishes a minimum age of 18 for any purchase of ammunition and a minimum age of 21 for the purchase of ammunition for firearms "other than rifles or shotguns".[3] Purchasers are also required, under federal law, to meet the same requirements as those requisite for the purchasers of firearms.[4]

Further restrictions and record keeping requirements at the state level would serve no useful purpose. Felons are not likely to be deterred from obtaining ammunition. They will use their normal methods of theft and guile and, if all else fails, go out of state.

[3] 18 U.S.C. § 922(b)(1)
[4] 18 U.S.C. § 922(d)

Extensive record keeping will provide no investigative assistance because, as stated above, felons don't shop at retail dealers. If a statewide registration system were to be implemented, the size of the database would be so massive as to preclude any query from producing a response of manageable size.

Some of these bills provide for de facto registration of rifles and shotguns.

A5503 and A6433 require the submission of detailed descriptions of the firearms for which the ammunition is being purchased. By then storing it in state operated databases, these proposals would implement de facto registration of rifles and shotguns. Registration of long guns is not authorized by state law and is specifically prohibited in the legislation implementing federal firearms regulations[5]. This legislation would permit the state to do through the back door what it not been authorized to do through the front.

These bills suffer from "definitional distress".

The primary target of these bills appears to be handgun ammunition. It is, however, virtually impossible to define clearly what is handgun ammunition; cartridges originally designed for use in handguns are frequently utilized in light rifles. Conversely, many handguns are chambered for cartridges that were originally intended for use in rifles.

The use of words or terms either poorly or not specifically defined makes it extremely difficult to evaluate the potential impact of the legislation. A4615 defines ammunition as "anything hurled by a weapon" but does not define "weapon". A6433 uses the term "application to purchase bullets". In addition to definitional problems, the proposal suffers from a lack of specificity as to methodology and administrative responsibility.

RECOMMENDATION

History has seen this before. In 1906, Mississippi passed legislation requiring retailers to maintain a record of ammunition sales and to make such records available for inspection on demand. This was the prelude to "confiscation through registration", targeted, quite openly, at minorities.

This tactic is used by prohibitionists to this day. Unable to ban the sale of alcohol, they have endeavored to make it needlessly complex through legislation and bureaucratic regulation; all this is done in the name of "protecting children" or "promoting healthy choices". For example, the New York wine industry never received the research and development support received by California wineries because, while the California university system fostered oenology degree programs and agricultural research, the "antis" in New York were able ban such support, to the economic detriment of the state.

With respect of A4615, A5503, and A6433, the legislation should not be enacted.

With respect to A4725/S3162 and A9006A/S5962A, P.L. § 271.35 should be included and P.L. § 271.40 should be struck. The remainder of this bill is outside of our purview.

[5] 18 U.S.C. § 926

POSITION STATEMENT

A4441/S4338
PERSONALIZED FIREARMS

CONCEPT

This proposal would mandate that all handguns manufactured or sold in New York after enactment would only be capable of being fired by the authorized user(s). A temporary state commission would be created for the purpose of establishing a performance safety standard. The commission would designate one or more independent laboratories to determine whether or not a proposed firearm complies with the standard.

The stated purpose of the proposal is to reduce the number of firearms related deaths and injuries by imposing design changes that would create a "personalized gun"[1]. The focus is misuse of firearms by persons other than the owner, resulting in accidental shootings, particularly those involving children, suicide, or diversion to criminal use.

While noble in purpose, extensive research and development efforts by both government and the private sector have been unable to develop a technology that is both effective and reliable enough for even pilot testing. At the same time, the firearms accident rate, among both adults and children, has continued to drop to all time lows, as have firearm involved crime rates.

POSITION

This legislation should not be enacted. It proposes a defective solution to a problem that has been, and continues to be, addressed through means that are more effective and much less costly. While the proposal has a legitimate objective, the available technology is not suitable for the intended purpose. The result is a mandate that would serve solely as harassment for firearms owners.

This is not a new concept. The original impetus for research was provided by law enforcement officials concerned with officers being shot with their own handgun, referred to as a "take away" shooting. Based on concepts developed by the Sandia National Laboratories in 1996, The National Institute of Justice (NIJ), a part of the United States Department of Justice, funded a series of research projects over the 2001 to 2004 timeframe. A total of about $12 million was spent on what was, for the most part, proof of concept research. In 2004, the National Academy of Engineering formed the Committee on User-Authorized Handguns to conduct a study that focused exclusively on the technical aspects of developing a UAHG. This study was completed in 2005.

[1] The terms "smart gun" or "personalized gun" are often used to describe this technology. This document uses the National Academies term "user authorized handgun" (UAHG), as it avoids inference of intelligence in smart gun and recognizes that there may be multiple authorized users.

While progress had been made in developing the components required for a UAHG, none of the projects had developed a system beyond the breadboard stage.[2] The conclusion of the committee was that the development of a UAHG poses serious engineering challenges that require technologies that are beyond the experience base of the firearms companies. While development of a conventional handgun would typically cost about $3 million and take 3 years, the cost of bringing a UAHG to market could reach $30 million and take 10 years[3].

At the same time, interest in the concept on the part of law enforcement officials began to fade with the sharp reduction in take away shootings, primarily due to improved training and equipment. There never was much enthusiasm for the concept on the part of the law enforcement rank and file.

Firearms safety has been, and is being, effectively addressed through other means.

Deaths and injuries from accidents involving firearms of all types, not just handguns covered by this proposal, are at an all time low. In 2006, there were 680 accidental, firearms-related deaths nationwide. Fatal accidents have fallen over 70% since 1970 and 40% in the last decade, representing 0.6% of all accidental deaths. In fact, firearms accidents have been decreasing steadily since record keeping began in 1903. This has been accomplished by addressing the root cause – the behavior of the user.

Accidents involving children are a matter of special concern. Over the last 10 years, the number of firearms-related fatalities, nationwide, involving children less than 15 years of age has decreased over 61%. In 2006, there was exactly one firearm related accidental death of a child under 15 in New York State, a rate of less than 0.00003% for the under 15 population as a whole[4]. Nationwide the number was 54. Historically, in firearms accidents involving children, the shooter is most likely to be a male between age 18 and 29 with a record of arrest for a crime of violence and a drug and/or alcohol problem.

These reductions were achieved through education and training programs conducted by the industry, national shooting sports organizations, youth organizations, and local gun clubs. Where appropriate, new technologies, such as external trigger locks, have been introduced.[5]

There is no correlation between firearms ownership and suicide.

The overall suicide rate is not related to the level of firearms ownership. Japan, with virtually a total prohibition on firearms ownership, has a suicide rate twice that of the United States. The same is true in Western Europe. France, Germany, Belgium, and Switzerland have higher rates, despite a variety of firearms laws that vary from virtual prohibition to liberal. The converse is also true; Italy, the United Kingdom, and the Netherlands have lower rates while having a similar range of regulation.[6]

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[2] At the breadboard stage, the system replicates the function, but not the configuration, of the operational system in a simulated environment and is not suitable for field-testing.
[3] National Research Council (2005). *Technology Options for User-Authorized Handguns*. Committee on User-Authorized Handguns. Washington, DC: National Academy Press. 1-7
[4] National Center for Health Statistics
[5] The National Safety Council. *Injury Facts® 2009 Edition*. Itasca IL, National Safety Council
[6] World Health Organization. (2009) http://www.who.int/

This remains an underdeveloped and unproven implementation of technology.

Despite the work done under the NIJ program, development has not progressed to the point of producing even a breadboard model. The extensive experience of manufacturers in the development of firearms technologies has allowed them to keep costs of conventional guns low. The development of a UAHG will require the integration of multiple technologies outside of their experience base. Furthermore, the work done is only on the developmental stage. No consideration has been given to the resources or costs involved in bringing to market a totally new technology with its unique manufacturing, service and support requirements. The industry has minimal financial capacity to support R&D on products for which there is no indication that a market exists.

There are a wide range of technical requirements and specifications that remain to be addressed:

False Reject Rate – Will the firearm fail to function for an authorized user?
False Acceptance Rate – How often will it function for an unauthorized user?
Failure Mode – If the system fails, does it fail armed or unarmed?
Ease of Compromise – How difficult is it to compromise the system?
Authorization Speed – How fast will it recognize an authorized user?
Multiple Users – Will the system accommodate multiple users?
Environmental Impact – How will the system handle heat/cold, dirt, chemicals, etc.?
Endurance Level – How long will it continue to function under heavy use and abuse?

There are other requirements but this list gives a flavor of the questions that have not yet been addressed outside of a laboratory.[7]

This legislation proposes to exempt law enforcement from the article.

Considering that the research and development effort on the UAHG has been driven by a requirement put forth by law enforcement officials, this would normally be surprising. That it is not reflects the actuality that rank and file law enforcement personnel are completely opposed to the concept. With the sharp reduction in takeaway shootings, there is little interest in adopting what has proven to be still a high-risk technology. It is inexcusable to attempt to saddle the private citizen, who could be equally dependent on their firearm, with a technology rejected by law enforcement as unreliable.

RECOMMENDATION

This legislation should be rejected. The technology still faces serious challenges before it is ready for introduction to the market. The fact that it has been found unacceptable by law enforcement only lends credence to this position. The problem of accidental shootings is being effectively addressed through education and training. This has proven very successful as shown by the steady drop in firearms related accidents over the last decade. The fact that this proposal sets wholly unrealistic time frames, establishes only a temporary commission, and provides for no ongoing responsible agency for management of its mandates demonstrates a lack of understanding of the issue

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[7] National Research Council (2005). *Technology Options for User-Authorized Handguns*. Committee on User-Authorized Handguns. Washington, DC: National Academy Press. 26-27

POSITION STATEMENT

A0801A/S1598A, A2407, A3076B/S5489 & S3597
GOVERNOR'S PROGRAM BILL #35
PISTOL LICENSE RENEWAL
TRAINING FOR PISTOL LICENSE APPLICANTS

CONCEPT

Several bills have been proposed that, if enacted, would modify the pistol license issuance and management process:

> A0801A/S1598A requires a five-year renewal for all pistol licenses outside of the City of New York. Nassau and Suffolk Counties already have five-year renewal, and Westchester County has five-year certification. Neither the current law nor this proposal provides any guidance on what would constitute license renewal nor establishes fees.
>
> A3076B/S5489, A2407, and S3597 require completion of a firearms safety course and test approved by either the Superintendent of State Police or the Division of Criminal Justice Services prior to the issuance of a license. The length of training or content is not specified.

In addition, the Governor has proposed a program bill that has not yet been introduced. It would provide for a five year NICS check for all licensees.[1]

The sponsors of the renewal bills state as justification the need to bring records up to date and to "ensure … that handguns do not fall into the wrong hands". While much of the justification statement suffers from factual inaccuracies, it is true that the licensing records contain some outdated or erroneous data as well as listing deceased licensees as active.

The sponsor of the training requirement bills propose to "reduce unnecessary injuries and accidents".

POSITION

These bills raise legitimate concerns, but we feel that none of them provide a reasonable and comprehensive course of action. Currently, pistol permits issued outside of New York City are valid until revoked for sufficient cause. Legislation requiring renewal of permits every five years increases the cost and burden to citizens who choose to exercise their civil right to keep and bear arms.

New York State law does not currently require the completion of a training course prior to the purchase of any firearm, rifle, or shotgun. Although well intentioned, legislation

[1] National Instant Check System. Operated by the FBI, NICS is a national system that checks available records on persons who may be disqualified from receiving firearms.

requiring a safety training course prior to issuing a pistol permit places an additional burden upon the exercise of a recognized civil right. Furthermore, evidence shows that voluntary training programs are adequate.

None of these bills contains sufficient specificity to permit a comprehensive evaluation of their potential effectiveness in satisfying the stated justification, nor to justify the burden they would impose on licensees. Therefore, none is acceptable as proposed.

A0828/S5459
POSSESSION BY UNLICENSED PERSONS FOR TRAINING

CONCEPT

The proposed legislation would permit individuals to receive training in the safe handling of firearms under controlled conditions prior to the issuance of a license. The purpose is to provide for more effective pre license training.

POSITION

We fully support this proposal. PL §265.20(a)(7a) and PL §400.00(3)(b) were intended to permit this but specify such complex administrative and investigative procedures as to render it unusable for the intended purpose. The ability to handle firearms during pre license training classes would allow a more effective pre-licensing course and permit the inclusion of existing programs, such as the NRA Basic Pistol Course, that require handing and firing of firearms to demonstrate comprehension of the material.

A6187/S3478
LIMITATIONS ON LICENSING OFFICERS' DISCRETION

CONCEPT

This proposal would limit the ability of licensing offers to impose restrictions not specified by statute on pistol licenses. Under current law, licensing officers are not limited in their ability to impose conditions based on personal beliefs or local political philosophy.

POSITION

We fully support this proposal. The licensing officer may, and in fact is expected, to make subjective judgments as to the fitness of applicants to receive licenses. The law gives them considerable discretionary authority and this authority has been upheld in litigation. The problem arises when they impose their personal or local political philosophy rather than use the fair and reasonable standards on which these decisions were intended to be based. This has resulted in a lack of consistency in the administration of a system that was intended to function statewide with uniform criteria and administrative procedures. Individuals who meet the statutory requirements should receive licenses.

A820
CONFIDENTIALITY OF PISTOL LICENSE INFORMATION

CONCEPT

This proposal would prohibit the disclosure of any information contained in a pistol license application, obtained during processing, or maintained after issuance from disclosure for other than law enforcement purposes.

POSITION

We fully support this legislation. Current law allows disclosure of the names and addresses of license holders, providing information to potential criminals and potentially facilitating the theft of firearms. There is no conceivable public purpose in making this information available for potential criminal misuse.

This bill provides broader protection than that offered in the Governor's Program Bill #35. The program bill protects only the licensee's address. We see no need for the public disclosure of any information related to individual pistol license holders for other than law enforcement purposes.

POSITION STATEMENT

A7575A & S4685A
AMEND THE DEFINITION OF SERIOUS OFFENSE

CONCEPT

These bills would add violations and misdemeanors where Family Court shares jurisdiction to the list of "Serious Offenses" defined in PL § 265.00(17). This would preclude anyone convicted of one of these offenses from possessing a firearm, rifle, or shotgun. The started purpose of the proposed legislation is to prevent domestic violence incidents from escalating.

POSITION

It is not clear that there is really a need for this legislation. Any judge of a court of record can revoke a pistol license and compel the holder to surrender their handguns. Under CPL § 530.14 and FCA § 842a the court has broad authority to compel the surrender of all firearms upon violation of an order of protection or conviction on a violent offense.

This is not "heat of the moment" legislation. The provisions of this proposal would only become effective after conviction on the offense. There is certainly time to permit action under the CPL and FCA sections above.

The offenses listed in FCA § 812 are for the most part violations and B misdemeanors. These are offenses that would not normally preclude an individual from possessing a rifle or shotgun and would not automatically exclude them from obtaining a pistol license. The Assembly bill would mandate a lifetime ban for minor non-violent offenses while the Senate version allows the respondent to petition to vacate the "serious offense" designation three years after the disposition of the Family Court case.

The definition of "serious offense" was meant to include just that – misdemeanor weapons offenses, Class A Misdemeanors likely to have been bargained down from felonies, or offenses indicating a propensity for future escalation. It was certainly not intended to include violations meriting only an appearance ticket.

RECOMMENDATION

This legislation is not really needed and could be extremely punitive It should not be enacted.

POSITION STATEMENT

A7183B/S4753A
PROHIBITS THE POSSESSION OF CONCEALED FIREARMS IN PARKS & RECREATIONAL AREAS

CONCEPT

The proposed bill would prohibit the carrying or possession of concealed firearms in any federal, state, or municipal park, campground, or other recreational area. The possession of all firearms, rifles, shotguns, and handguns, is currently prohibited in state parks and canals.[1] This bill appears to be a response to the recent change in federal law that permits the possession of licensed concealed firearms in National Parks. The sponsors contend that the possession of licensed concealed weapons somehow "represents an unnecessary threat, whether intentional or unintentional, to the health and safety of the citizens…"

POSITION

This bill is pointed in the wrong direction. The licensing law should apply in parks in the same manner as any other public space.

There is no evidence that licensed concealed firearms pose any risk to the public.

On the contrary, jurisdictions with the provision for concealed carry tend to enjoy lower rates of violent crime. Many parks are encompass large areas and are thinly policed. It is not unreasonable for individuals to want to enjoy the same level of security they enjoy in their homes.

The possession of licensed concealed weapons in public parks is common in many states.

Effective in February 2010, individuals who are licensed to carry concealed handguns under state law may exercise that right in National Parks located in that state. In addition, 31 states permit licensed concealed carry in their state parks.

There are inadequate provisions for individuals living, working, or traveling within parks.

The proposed bill provides for possession in a residence located within a park but does not provide for transporting a firearm to or from the residence. No provision is made for individuals who transit parkland on public roads nor are there any provisions for individuals who are employed at businesses in private facilities located within the parks.

The prohibition could be applied to public shooting ranges.

The inclusion in the proposed ban of "other publicly dedicated recreation area" could be construed to include publicly owned shooting ranges, either indoor or outdoor, no matter where they are located. This is clearly much too broad a definition.

[1] 9 NYCRR 375.1(p) and 21 NYCRR 150.9

RECOMMENDATION

New York State law should be changed to make it consistent with federal law and permit the possession of licensed, concealed firearms within state parks and recreational faculties.

Minimally, the legislation should be amended to make clear that that the prohibition does not apply to individuals transiting parkland on public roads or individuals living or working within the confines of a park. Needless to say, it should clearly not apply to anyone using public shooting ranges.

POSITION STATEMENT

A7733A/S5466
SEIZURE OF WEAPONS FROM THE MENTALLY ILL

PURPOSE

The proposed legislation is intended to remove firearms, rifles, and shotguns from the hands of individuals determined to have mental health problems requiring involuntary commitment and treatment. It would require the court to revoke the individual's pistol permit and require the surrender of any firearms, rifles, or shotguns possessed by that individual. The proposal amends the CPL and MHY to include the various commitment or adjudication situations.

POSITION

While we concur that the possession of firearms, rifles, or shotguns by the mentally ill should be prohibited, we have some serious concerns about the disposition of surrendered firearms, rifles, or shotguns. These are not "crime guns". They are the personal property of an individual with an illness. Of particular concern are the elderly who may suffer from dementia or veterans with posttraumatic stress disorder.

Particularly in the case of the elderly, these may represent a collection acquired over a lifetime and have significant monetary value. There must a mechanism to insure that they remain in the family or full value is realized and used to the benefit of the individual.

There does appear to be a conflict between PL § 265.20(a)(1)(f) and MHY § 29.23 with the respect to the disposition of the surrendered guns. The PL requires destruction if not sold, reclaimed, or transferred within one year. The MHY states that all property must be used for the benefit of the individual.

We would like to see some assurance that the items surrendered be returned to the individual if they are granted a relief from disabilities under the MHY, disposed of as instructed by the individual if they are competent to conduct their business affairs, or disposed of in a manner that will realize their market value for the benefit of the individual per MHY § 29.23.

The sponsors claim the bill is needed because courts lack the power to revoke permits and remove firearms from individuals adjudicated as incapacitated or ordered to treatment. This is not true with respect to handguns as any court of record can revoke a pistol license at any time, compelling surrender. With respect to rifles and shotguns, the director of any hospital or institution for mental illness can certify an individual who has been adjudicated incompetent or judicially committed as not suitable to possess a rifle or shotgun. Refusal to surrender is a violation of PL § 265.01.

The net effect is that this bill does not really provide any more authority than the court already has although it does appear that currently they might have to get a medical sign off for it.

POSITION STATEMENT

A1326/S5228 CHILD OPERATED FIREARM
A2885 PROHIBIT "UNSAFE" FIREARMS
A2910 STANDARDS FOR PISTOLS & REVOLVERS
A3346 PROHIBIT "JUNK GUNS"
A4057/S1069 PROHIBIT "NON-DETECTABLE" FIREARMS

CONCEPT

The stated purpose of these proposals is to prohibit firearms that the sponsors allege to be an imminent threat to public safety due to their design features, the materials from which they are made, or the manufacturer's production standards. The sponsors have made the determination that, in their minds, these firearms are inherently unsafe and thus have no legitimate sporting or self-defense purpose and should therefore be removed from the market. It is further contended that these firearms are disproportionately used in the commission of crimes.

POSITION

These proposals should be rejected. There is no evidence that they address any real problem or threat, nor do they serve any purpose related to a legitimate state interest. This is another example of legislation based on a lack of technical understanding, false or misleading information, and personal agendas. The sponsors, in fact, are attempting to legislate against a segment of the firearms population that they find unattractive, undesirable, or in conflict with their personal philosophy. Moreover, they are arguing both sides of the issue at the same time. They claim that these firearms are "useless for legitimate owners" but are "dangerous weapons" when in the hands of a criminal.

There is no evidence that "ease of operability" poses any threat to young children.

Deaths and injuries from accidents involving firearms of all types are at an all time low. In 2006, there were 680 accidental, firearms-related deaths nationwide. There were just 12 fatal firearms accidents for all age groups in New York State during 2006. This is a rate of .06 per 100,000, among the lowest in the nation. In fact, firearms accidents have been decreasing steadily since record keeping began in 1903. This has been accomplished by addressing the root cause – the behavior of the user.

Accidents involving children are a matter of special concern. Over the last 10 years, the number of firearms-related fatalities involving children less than 15 years of age has decreased over 61%. In 2006, there was one firearm related accidental death of a child under 15 in New York State, a rate of less than 0.00003% for the under 15 population as a whole[1]. Nationwide in 2006, the number of fatalities in this group was 54.[2] Historically, in firearms accidents involving children, the shooter is most likely to be a male between the ages of 18 and 29 with a record of arrest for a crime of violence and a drug and/or alcohol problem.

[1] National Center for Health Statistics
[2] The National Safety Council. *Injury Facts® 2009 Edition*. Itasca IL, National Safety Council

The fact is that the vast majority of pistols and revolvers would be extremely difficult for a child under age six to operate due to their size, manual and automatic safeties, and weight of trigger pull. The pistol or revolver would have to be intentionally left in an unsafe condition – loaded, cocked to fire, and safety off – for a child to be able to discharge it Any requirement to render a pistol or revolver "child safe" when immediately ready to fire would render it useless for its intended purpose – be it sporting or personal protection. It should also be noted that no law enforcement agency has ever raised this issue in specifications for any firearms purchase.

While all firearms are designed to be safe when operated properly, adding any additional requirements cannot be done arbitrarily. Nothing in the law can unreasonably impede the use of a firearm for self-defense. The United States Supreme Court in *District of Columbia v. Heller*[3] held that a "prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense" violates the Second Amendment.

It is untrue that inexpensive handguns are poorly made of inferior materials and are therefore inherently unsafe.

The attempt to equate cheap with unsafe is entirely unwarranted. No testing, done either privately or by the United States government, has demonstrated that any low priced pistol or revolver poses a danger to the user. Even the most outspoken critics of firearms ownership have not been able to point to any instance of death or serious injury through the failure of an inexpensive handgun. Firearms standards in the United States are established by the Sporting Arms and Manufacturers Institute (SAAMI)[4]. While these standards are voluntary, any manufacturer who does not meet them does so at their peril. Today's litigious society leaves little room for manufacturers of unsafe products or for those who fail to comply with recognized standards.

Cheap handguns are not preferred weapon by criminals.

Despite the claims of the sponsors that "'junk guns' are used disproportionately in the commission of crimes," repeated studies, both public and private, have found that criminals intending to use firearms much prefer large caliber, high quality pistols and revolvers[5]. While the lack of a precise definition of "cheap handgun" makes gathering statistics difficult, firearms recovery data from criminal investigations would seem to indicate that from 1 to 3% of the weapons recovered would fit this classification. The "criminal classes" are hardly the target market for these firearms.

The real market for these firearms is the law-abiding citizen.

The actual purchasers of these pistols and revolvers are law-abiding citizens who want a firearm for personal protection or occasional sporting use and do not have the funds to purchase a more expensive, higher quality firearm. These purchasers do not need the greater precision or high usage endurance of an expensive firearm, but one that can meet their less demanding needs at a price that they can afford. Any firearm that meets

[3] 128 S. Ct. 2783 (2008)
[4] SAAMI is the American National Standards Institute (ANSI) recognized standards setting organization for sporting firearms and ammunition and SAAMI Standards are ANSI Standards.
[5] M. W. Zawitz (1995) *Guns Used in Crime*. Washington DC, U.S. Dept. of Justice, OJP, BJS

the lawful needs of a legitimate purchaser has a social and economic use and merits a place in the market.

Restrictions of this type would disproportionately impact lower income citizens by reducing the availability of defensive firearms that they can readily afford. This is reminiscent of the earliest gun control laws, which were intended to disarm the poor, immigrants and racial minorities.[6] At the very least, this smacks of elitist rhetoric that treats law-abiding citizens as needing governmental guidance in their decision-making and impinges on their right of self-defense. In any case, it becomes, in effect, gun control by economic means.

Detectability of firearms by security equipment is already covered in federal law.

Federal law prohibits the manufacture, importation, sale, shipment, delivery, possession, transportation or receipt of any firearm "(A) that, after the removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar by walk through metal detectors calibrated and operated to detect the Security Exemplar; or (B) any major component of which, when subject to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component."[7] The Security Exemplar is an object in the shape of a handgun containing 3.7 ounces of type 17-4 PH stainless steel.

We do not see what any proposed state legislation would add to the existing federal law – The Undetectable Firearms Act of 1988 – which has been in place for over 20 years.

RECOMMENDATION

All of these bills should be rejected.

This is another attempt to legislate against a particular segment of the firearms market by characterizing it in pejorative terms. There is no evidence that these firearms are unsafe or are particularly favored by criminals. Indeed, it is the potential victims of crime that would be most impacted by this legislation, deprived of their right to defend themselves by artificial economic barriers erected by an elitist governmental policy.

In a time of economic stress, the proponents of these bills would have the state spend its resources running around developing lists, creating standards and preparing reports that serve no useful purpose or duplicate work already done by the federal government.

The true objective of these bills is revealed in the one bill that lists specific firearms. Several of the pistols listed are made by leading manufacturers. They are well made pistols manufactured using quality materials and to high production standards. They are not cheap by any means. They are, however, small, compact, defensive firearms, the true target, if you will excuse the pun, of this legislation.

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[6] The earliest firearms prohibitions were the post Civil War enactment in the southern states of the "Black Codes". These laws were intended to keep the African- American population in virtual serfdom, without political rights, and excluded from virtually any chance at economic or social advancement and, of course, forbidding them to own firearms.

[7] 18 U.S.C. §922(p)

POSITION STATEMENT

A1094, A5844A & S3098
SAFE STORAGE OF FIREARMS

THE CONCEPT

The theory behind these proposals is that by mandating a regimen of storage procedures for weapons, defined as rifles; shotguns; pistols; and revolvers, there will be a reduction in the firearms deaths and injuries in New York State, particularly those involving children. The specific objectives are the prevention of theft by individuals for use in other crimes, the deterring of spontaneous suicides, and a reduction in accidents. This is built on the premise that a significant number of weapons are currently stored in an unsecured manner and are, in fact, the source of weapons used criminally or negligently.

POSITION

We fully recognize the responsibility of firearms owners to store their firearms in a safe and secure manner. Individuals who behave in a reckless or negligent manner with respect to the handling or storage of firearms should be held accountable at law. This must, however, be dealt with in a manner that not only addresses the responsibilities but also recognizes the rights of firearms owners. These proposals take a sledgehammer approach when some fine-tuning would be more appropriate. We believe that this legislation must be amended to address these issues before it is acceptable.

Nothing in the law can unreasonably impede the use of a firearm for self-defense.

The United States Supreme Court in *District of Columbia v. Heller*[1] held that a "prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense" violates the Second Amendment. No Constitutional right is unlimited and nothing in this decision should be construed to excuse reckless or negligent behavior, but requirements for a "locked box" or "gun locking device" go way over this threshold and negate the right to immediate self-defense – and are thus probably unconstitutional.

Accessibility of firearms does not represent a threat to New York children.

In 2006, there was exactly one firearm related accidental death of a child under 15 in New York State, a rate of less than 0.00003% for the under 15 population as a whole[2]. The sponsors put forth a series of national statistics and an analysis, arriving at the conclusion that 10% of today's youth (exact age undefined) live in a home with a readily accessible weapon. By their definition, this represents 2.6 million children.[3] Based on the proffered 22 million children living in a home where there is a firearm, this is a fatal

[1] 128 S. Ct. 2783 (2008)
[2] National Center for Health Statistics
[3] Shuster, M.A., Franke, T.M., Bastian, A.M., Sor, S., & Halton, N. *Firearms Storage Patterns in U.S. Homes with Children*, American Journal of Public Health 90.4 p 588-594 (2000)

incident rate nationally of 0.0002%. This number has dropped more than 60% over the past 10 years[4]. The primary reason has been education of both adults and children as to proper firearms handling and storage. New York has been particularly successful.[5]

There is no correlation between access to firearms and suicide.

The overall suicide rate is not related to the accessibility of firearms. Japan, with virtually a total prohibition on firearms ownership, has a suicide rate twice that of the United States. The same variation is true in Western Europe. France, Germany, Belgium, and Switzerland have higher suicide rates, despite a variety of firearms laws that vary from virtual prohibition to very liberal. The converse is also true; Italy, the United Kingdom, and the Netherlands all have lower rates while having a similar range of regulation.[6]

Persons under eighteen years of age may legally possess rifles or shotguns.

State law permits the possession of a rifle or a shotgun by a person sixteen years of age or older for any lawful purpose. This proposal would criminalize an otherwise lawful act. An individual sixteen or older can, in full compliance with the law, possess a rifle or shotgun and participate in such legal activities as firearms training, target shooting, or hunting. Under this proposal, a parent could be criminally charged for what is currently a completely legal activity.

The storage standards must be related to the specified problem.

The standard of safe storage for the purpose of keeping weapons out of the hands of children should not be the same as one designed to deter an adult burglar equipped with power tools. A simple locked closet or drawer should suffice. The concern here is that the wording of the proposal is such that every firearms owner could be required to purchase a safe or build a vault.

If standards are required, their development should be under the direction of an administrative agency such as the Division of Criminal Justice Services and include input from industry and the public. While law enforcement participation in the process is desirable, the state police are a law enforcement agency and should not be in the business of writing the laws that they are going to enforce.

RECOMMENDATION

This is at best “feel good” legislation, trying to address a problem that doesn’t really exist. The death or injury of a child is, indeed, a tragic occurrence, but the most frequent cause is not going be addressed by this legislation. Individuals who put children at risk are not likely to be deterred by anything in the New York Penal Law. Should the legislature wish to codify what is, in reality, personal responsibility and common sense, it should be done so in a manner that is consistent with the rights of firearms owners and specifies a level of security that is appropriate to the perceived risk.

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[4] National Center for Injury Prevention and Control, CDC Data, WISQARS Injury Mortality Reports, 1986-2006

[5] During 2006, there were 12 accidental firearm related fatalities in New York State in all age groups, a rate of .06 per 100,000, among the lowest in the nation.

[6] World Health Organization. (2009) http://www.who.int/

POSITION STATEMENT

A1275/S1712, A2884 & A5272
RESTRICTIONS ON GUN SHOWS
A1186/S1713 & A1536/S1714
SALE OF RIFLES AND SHOTGUNS

THE CONCEPT

The first group of proposals seeks to expand existing restrictions and impose added prohibitions on gun shows by expanding the definition of the term, prohibiting the use of public facilities for gun shows, and restricting attendance. These proposals are purportedly justified by unsubstantiated or patently false allegations of sales of weapons to prohibited persons or of being a corrupting influence on minors.

The second set seeks to prohibit the private sale of rifles and shotguns by requiring that all such transactions take place through a licensed dealer and thus be subject to a NICS[1] check. The sponsors states as justification, again without substantiation, that "the unregulated secondary market provides an easy avenue for prohibited persons to purchase weapons."

POSITION

We stand in opposition to these proposals because they are directed at imposing additional restrictions on legal firearms owners who are engaged in perfectly legitimate activities and already operate under a plethora of regulations. They are offered without any evidence that they represent an effective response to a legitimate government objective nor do they promise any perceivable benefit to the general public.

Theft and the illicit gun market is the source of all but a miniscule number of the weapons used in the commission of violent crimes. The illicit market is called the illicit market because it operates outside of the law. It is not going to be impacted in the slightest by further restrictions or prohibitions imposed on the legal owners of firearms, be they rifles, shotguns, or handguns.

The proposal to clarify the definition of "gun show" falls short.

The current definition of a "gun show" in G.B.L. §895 was ruled by a federal district court to be "overbroad" and, in effect, unenforceable, as it could apply to any gathering of gun owners regardless of purpose[2]. This proposal offers no improvement. Any competitive or sporting firearms event could easily run afoul of this law. As the proposal removes the requirement for specific sponsorship, and since there is no requirement of actually offering a gun for sale, it could result in potentially having a 4th of July parade declared a gun show.

Auction houses are businesses – they have federal licenses. Pursuing the odd rifle or shotgun at a flea market or garage sale is regulatory excess.

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[1] National Instant Check System. Operated by the FBI, NICS is a national system that checks available records on persons who may be disqualified from receiving firearms.
[2] SCOPE, Inc. v. Pataki, 386 F.Supp. 2d 184 (WDNY 2008)

Criminals do not obtain their weapons at gun shows.

Nationally, less than 1% of the weapons used in the commission of a violent crime are acquired at a gun show. Remembering that the majority of states require no state license or prior approval to purchase any weapon from any source[3], it is safe to assume that the New York figure is significantly less[4]. New York State requires that all weapons transfers at a gun show undergo a NICS check. If neither party is a federally licensed dealer, the gun show operator must make available a dealer who will complete the NICS check and document the transfer at cost[5].

Since New York State registers and licenses handguns, no legal transfer can take place under any circumstances without the authorization of the licensing officer. As handguns comprise about 85% of the weapons used in violent crimes[6], the mandatory NICS check for long gun transfers should reduce the likelihood of a gun show being the scene of an illegal weapons transfer to near zero.

Far from being an open market in weapons, dealing in firearms at a gun show is a highly regulated business.

The proponents of this legislation would have us believe that there are a large number of unlicensed firearms dealers lurking around every legitimate assemblage of potential gun buyers. This is untrue. Under federal law, "It shall be unlawful (1) for any person (A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms,."[7] Violation of this law is a felony.[8] This is not an appearance ticket offense, and violators are looking at serious prison time.

Licensed dealers are permitted under both federal and state law to do business at their licensed premises and, temporarily, at a gun show, shooting competition or sporting activity.[9] The same regulations, with respect to NICS checks and record keeping, apply, regardless of the location. Private individuals may make occasional sales from their personal collections without a federal license but all transactions at gun shows must undergo a NICS check through a licensed dealer with the attendant record keeping requirements.[10]

Private sales of rifles and shotguns have never been shown to be a significant source of weapons used in violent crime.

With handguns representing about 85% of the weapons used in violent crime and the illegal market being the prime source of all of these weapons, imposing additional restrictions on private transactions between law-abiding individuals would impose a significant burden with no appreciable impact on offenders' ability to secure weapons.

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[3] Twelve states require some form of preapproval for handgun purchases, five register handguns.
[4] Caroline Wolf Harlow, *Firearms Use by Offenders*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics (2001). State breakdown not available.
[5] G.B.L. §895 through §897
[6] Harlow, op. cit.
[7] 18 U.S.C. § 922(a)
[8] 18 U.S.C. § 924(a)(1)
[9] 18 U.S.C. § 923(j) and P.L. §400.00(8)
[10] 18 U.S.C. § 921(a)(21)(C) and G.B.L. §897

The majority of these now-legal transactions would appear to be between family members or individuals known to each other, such as fellow shooting-club members or hunting companions, not ineligible individuals.

Prohibition of gun shows on public property is uncalled for.

This is an attempt to prohibit citizens from engaging in a legitimate, constitutionally protected activity on what is, in essence, their property because some individuals find it personally objectionable. The sponsor's statement that "25% of the sales made at gun shows do not involve any type of background check" is patently false. All transfers at gun shows are required by law to undergo a NICS check.[11] This is an attempt to legislate personal philosophy at the expense of individual rights.

Prohibiting individuals under eighteen from attending gun shows or enter a store selling guns is absurd.

The sponsor purports that allowing a person under eighteen to enter a gun show or gun store will somehow scar them for life and cause them to develop aggressive or violent behavior. This is a bizarre conclusion and bears not the faintest relationship to reality. The sponsor's comparison of the age requirements for voting, driving, and alcohol sales are disingenuous at best. Minors may not vote, but we encourage them to learn as much as possible about the electoral process and attend political functions. They are not banned from motor vehicle dealers or attending car races, and children of any age are allowed to dine with their parents in facilities with liquor licenses.

Participation in the shooting sports has long been an enriching activity for young people. New York State law currently allows individuals age 12 or greater to use rifles and shotguns on a firing range and under supervision. They may hunt at age 14, again under supervision. Individuals 16 or older can possess rifles and shotguns for lawful purposes without supervision. Individuals age 14 through 21 can handle handguns on a shooting range under supervision. All of this is law of long standing. These activities have produced not violent individuals, but citizens with personal discipline as well as respect for others and the environment that we live in.[12]

RECOMMENDATION

All of these proposals should be rejected.

The real purpose of these proposals appears to be to further restrict the entirely legal and already regulated use of firearms, rifles, and shotguns through the imposition of additional constraints that serve no legitimate governmental purpose. These proposals are based on conclusions that are speculative or specious. All transfers of legally owned handguns are tightly controlled by the licensing system. All rifle and shotgun transfers at gun shows are, in effect, handled through a licensed dealer and thus undergo a NICS check and record keeping. Casual private sales of long guns have never been established to be a source of weapons used by violent criminals.

[11] G.B.L. §897
[12] P.L. §265.05, §265.20(a)(7)(a), and §265.20(a)(7)(e)

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S2379	2
S2741	4
S2953	4
S3098	15
S3162	8
S3478	10
S3597	10
S4084	7
S4338	9
S4397	3
S4456	6
S4685	11
S4752	1
S4753	12
S5228	14
S5459	10
S5466	13
S5489	10
S5561	2
S5932	8
S6005	3
S6676	6