



GUN OWNERS OF AMERICA

NEW YORK

"THE CIVIL RIGHTS RESTORATION ACT"

1. **DEFINE and GUARANTEE "due process of law" to be afforded in all proceedings that could impact the fundamental rights of the individual under the Second Amendment of the United States Constitution, including such proceedings as could result in the loss of a handgun license or a firearm, shall include (a.) contemporaneous notification to an individual of being reported to any law enforcement database that could result in the deprivation of rights to own, possess, or use a firearm and/or in the deprivation of a lawfully-owned firearm, including, but not limited to reports under MHL §9.46 and 18 U.S.C. §922(g), (b.) no order shall issue nor proceeding be commenced without a pleading or other accusatory instrument being filed and served upon the individual, meeting the requirements of a "pleading," under CPLR Art. 30, (c.) the right of the individual to examine the complete contents of his or her own handgun license file constructed by State and Local licensing and law enforcement authorities, (d.) the burden of proof shall be no less than "clear and convincing evidence," (e.) the right to counsel at a license hearing, including the right to assigned counsel, if counsel cannot be afforded by the individual, and (f.) any firearms confiscated and/or surrendered into law enforcement evidence status during a proceeding shall not be destroyed unless the same is specifically directed through a written order by a court of competent jurisdiction at the conclusion of all disqualification proceedings relating to the individual, including any appeals undertaken (new); AMEND use of the term "shall" to "may" to restore judicial discretion based upon the facts established in the individual case (Penal Law §400.00(11)(b)); REQUIRE all State and Local law enforcement agencies to cause to publish on an annual basis an inventory of every non-departmental firearm that is destroyed, including the make, model, caliber, serial number, and jurisdiction and date of the court order directing the destruction of said firearm (new); REPEAL "nuisance firearm" automatic destruction statutes (Penal Law §400.00(11)(c), (16-a)(c)).**

The rights of the individual under the Second Amendment to the United States Constitution are "fundamental," as emphasized by the Supreme Court of the United States.^{1,2} Such rights of the individual are often also intertwined with their property rights, concerning which SCOTUS has recently issued clear

¹ *Distr. of Columbia v. Heller*, 554 U.S. 570 (2008).

² *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

CIVIL RIGHTS RESTORATION ACT

(ver. 01/09/2017)

Page 2 of 6

direction.³ Before an individual can be deprived of these crucial civil rights, the individual must be afforded Due Process.⁴

At this moment, across the State of New York, individuals are suffering the permanent loss of their fundamental rights under the Second Amendment through court proceedings based upon nothing more than the unsubstantiated and false allegations of the NYS Police contained in secret letters written to judges, who initiate suspension and confiscation orders without any underlying pleading or accusatory instrument.⁵ These *ex parte, sua sponte* court orders make the judge both the accuser and the trier of fact. Neither the State nor the County is obligated to, nor are they present at, license hearings. The NYS Police actively resist attorney applications seeking to compel their testimony on the basis that they have conducted “no investigation” and thus are incompetent witnesses.

Frequently, these proceedings come as a shock to the individual, who may have sought voluntary, limited mental health support or who may have presented at an emergency department with a medical condition resembling in some respects a mental health episode.

License hearings are complex matters that require knowledge of Federal and State law. It is a significant financial burden to hire an attorney to defend against these allegations, if one can even be found with experience in this field. Without an attorney, the individual stands little chance of prevailing, and they may then face criminal charges in Federal or State court for the interim continued possession of firearms they lawfully owned. Many of the mental health allegations are simply false.

The NYS Police has instituted no written policy or procedure to determine which firearms are “nuisance firearms” for destruction purposes. There is no independent oversight of firearms brought into inventory, nor is there reporting of firearms destroyed. Recent audits by the NYS Office of the Comptroller found significant irregularities in the handling of confiscated firearms.⁶ Federal law, as applicable to Federal Firearms Licensees who are manufacturers provides guidance on best inventory practices, including best

³ *Henderson vs. U.S.*, 135 S. Ct. 1780 (2015).

⁴ *Matthew vs. Eldridge*, 424 U.S. 319 (1976).

⁵ Pending litigation in the Western District Court of NY seeking the right to counsel at such license hearings, as well as a United States Inspector General audit of State reporting practices to the FBI is found at *McKay vs. New York*, 6:16-cv-06834. The underlying license hearing decision is found at 52 Misc.3d 936 (2016).

⁶ For an overview of the analysis, see: <https://www.osc.state.ny.us/localgov/audits/swr/2015/PPRI/global.pdf>. Breakout reports were also published.

CIVIL RIGHTS RESTORATION ACT

(ver. 01/09/2017)

Page 3 of 6

destruction of firearms from inventory practices. These Federal statutes and regulations should be adopted and applied to law enforcement agencies in NY.

- 2. REPEAL secret reporting by medical professionals to law enforcement (MHL §9.46); DISCLOSE to all individuals that he or she has been reported to the State and/or Federal government under MHL §9.46 and/or 22 U.S.C. §922(g) through written notification within sixty days of enactment (new); PROHIBIT an individual's medical and clinical records from being used for routine law enforcement reporting purposes relative to firearms ownership, use, possession, or suitability (new); PUNISH false reporting of a person as "involuntarily committed" through imposition of a fine of up to \$10,000 per offense against any individual, business, or government official (new); AWARD reasonable attorney's fees and costs against the State in any individual license hearing wherein the person establishes that a claim that he or she was "involuntarily committed" was false (new); REQUIRE the State to correct any false or incorrect report against an individual to State and Federal databases, including those under 22 U.S.C. §922(g), within seven (7) days of entry and service upon the State of a final order of disposition in a case, including that the failure to timely do so will be punishable through contempt of court (new).**

Beginning in 2013, the NYS Police began an aggressive program against individual handgun license holders to terminate their rights under the Second Amendment through secret letters sent to County Court Judges and Clerks accusing people under a MHL §9.46 report (a/k/a the "SAFE Act Report") or of being "involuntarily committed" under 18 U.S.C. §922(g)(4) (read with 27 CFR §478.11).

In response, local judges began signing *ex parte sua sponte* orders of permit suspensions and firearm confiscations. All State agencies involved in this scheme have admitted a failure to conduct any investigation into the accuracy of the allegation, including the NYS Police, the NY Department of Criminal Justice Services, and the NY Office of Mental Health.

These NYS agencies are encouraging medical providers to violate patient privacy to a level that some hospitals are reporting to State law enforcement every patient who arrives for mental health treatment and/or who arrive with a medical condition that bears a resemblance to a mental health condition. The individual gets no notification of this reporting. The report is not put into medical records. At the conclusions of successful license hearings, local judges are asking for the statutory authority to award fees and costs against the

CIVIL RIGHTS RESTORATION ACT

(ver. 01/09/2017)

Page 4 of 6

State and for the judicial authority to force the State to correct the erroneous allegations in State and Federal databases.

Since 2013, approximately 200,000 individuals are estimated to have been reported under MHL §9.46 to the NYS Police through the “Integrated SAFE Act Reporting System” (“ISARS”). As of December 2015, approximately 383,000 individuals have been reported to the FBI.

The only current recourse is for the individual to fight at the local license hearing through a costly and time-consuming hearing, and then to sue in Federal Court to try to win the correction of the false FBI record.⁷

- 3. AMEND the definition of “immediate family” to include “parents, brothers, and sisters” for purposes of private transfers of firearms exempted from background checks (Gen. Bus. Law §898(1)).**

The statute, as currently written, defines “immediate family” for purposes of background check exemptions in private transfers to include only “spouses, domestic partners, children and step-children.” This is too narrow, and works against the proud family tradition of inter-generational hunting and the preservation of the memories of those who serve in the Armed Forces of the United States.

- 4. AMEND satisfactory proof of individual identification for purposes of a background check to include an exemption from government-issued photographic identification and/or photographs for persons of the Amish faith when fingerprints are otherwise provided (see, Penal Law §400.00(1), §400.03(3)(c)).**

Those of the Amish faith do not permit the taking of photographic images. Under the Act, this renders them ineligible for the purchase of a firearm, even under the immediate family members. Those of the Amish faith rely upon long guns and bow hunting to sustain their families and communities and to guard their livestock.

There is no known reported crime committed by a person of the Amish faith using a firearm.

⁷ Pending litigation in the Western District Court of NY seeking to strike down MHL §9.46 as unconstitutional is found at *Montgomery, et al. vs. Cuomo, et al.*, 6:14-cv-06709. Pending litigation in the NYS Supreme Court, Albany County, seeking to break open the secret reporting database, is brought by 26 Petitioners on behalf of more than 2,000 people who have submitted Freedom of Information Requests to the NYS Police, is found at *Fox vs. NYS Police*. For more information on these and other, related cases, see www.Law-Policy.com.

CIVIL RIGHTS RESTORATION ACT

(ver. 01/09/2017)

Page 5 of 6

5. **REPEAL the handgun permit recertification program of the NYS Police (Penal Law §400.00(10)(B)); LIMIT the role of the NYS Police relative to handgun licenses to that of providing a criminal background check upon request by the local licensing authority (new).**

For more than 100 years, the handgun license system has been administered at the county level, in proximity to and readily accessible by the individual. There is no public policy data to support a claim of increased public safety through this taxation scheme. The individual right of self-defense is “fundamental,” and the “quintessential self-defense weapon” used by Americans is the handgun, as so found by SCOTUS.^{8,9}

Governor Cuomo wants the NYS Police to take over the handgun permit system and collect the new fees, but then send back to County Courts, County Clerks, and Sheriffs Departments the costs and the personnel time involved in enforcement. The NYS Police program would be duplicitous to the well-established, County-based system, increase State taxes for administration, and accomplish no law enforcement objective at the State level.

6. **REPEAL the “Sellers of Ammunition” [non-operational] requirements of the NYS Police (NY Penal Law §400.03, §265.00(24)); PROHIBIT the “Keeper of the Ammunition” program of the NYS Police (see PPB-7A (12/2013)).**

The “Seller of Ammunition” (also known as the “ammunition background check” system) was suspended in 2015 through a “Memorandum of Understanding”¹⁰ and should now be repealed. It looms over the heads of federally licensed dealers of firearms and associated products like a trap door waiting to spring and drive away routine commerce necessary for the survival of their businesses.

The statute originally called for the ammunition background check at point of sale to be conducted by the FBI through the NICS database, which would have constituted a violation of Federal law. It will be a burden upon the taxpayer without any research-based public safety claim. In 2012, the State repealed the NYS Police Combined Ballistic Identification System (CoBIS) for failed technology at costs exceeding \$32 million with no reported return on investment.¹¹

⁸ *Distr. of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

⁹ *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

¹⁰ <https://www.scribd.com/document/271176024/NY-Safe-Act-Changes>.

¹¹ <http://nyassembly.gov/mem/Joseph-M-Giglio/story/47130/>

CIVIL RIGHTS RESTORATION ACT

(ver. 01/09/2017)

Page 6 of 6

The "Keeper of the Ammunition" program was rolled out by the NYS Police against rod and gun clubs, with no basis at law. The NYS Police Form PPB-7A goes so far as to require individual Social Security Numbers from a club member if the group is unincorporated. The impact includes that local rod and gun clubs are chilled from seeking reimbursement from members for ammunition at club shooting events like trap league, as well as from students and scouting organizations for events like field days.

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