



# NY SAFE Act

## *Information for Law Enforcement*

*April 4, 2013*

# SAFE Act Summary

- Stronger criminal penalties for illegal gun use, including:
  - Enhanced sentences for murder of a first responder and gang prosecutions and drug/violent felonies that involve a loaded or unloaded gun
  - Enhanced penalties for possession of a weapon on school grounds and purchase of a gun for a disqualified individual (“straw purchases”)
- Kendra’s Law extended and strengthened

# SAFE Act Summary

- Background checks and recertification:
  - Background checks on all private sales (except to immediate family)
  - Background checks on all ammunition purchases (effective 2014)
  - Five-year recertification for firearms licenses
  - Reporting of dangerously mentally ill by mental health professionals
  - Safe Storage
- Restrictions on capacity and registration of assault weapons:
  - Ban magazines with a greater than 10 round capacity
  - Registration of existing assault weapons and no future transfer except out of state, to a dealer, or to law enforcement

# New Tools for Law Enforcement

# New Crimes

	New Law	Penalty
<b>Stopping the Use of Illegal Guns</b>	Prohibits possession of an unloaded firearm while committing a drug trafficking felony. (PL 265.02)	At least 2, but no more than 7, years in prison
	Prohibits possession of an unloaded firearm while committing a violent felony. (PL 265.02)	At least 3½ but no more than 7 years in prison
	Prohibits possession of a loaded weapon while committing a drug trafficking felony or a violent felony. (PL 265.19)	At least 5, but no more than 15, years in prison
	Prohibits providing access to a shared or “community gun” so that it can be used to commit a crime. (PL 115.20)	Ranges from up to one year in jail to as much as 8⅓ to 25 years in prison

# Enhanced Penalties

	New Law	Penalty	Previous Law
<b>Protecting First Responders</b>	Raises penalty for killing a firefighter, EMT, ambulance driver, paramedic, physician or registered nurse when performing emergency response activities. (PL 125.26)	Life sentence without parole or 25 years to life in prison	Previously punishable by up to 25 years to life in prison
<b>Ensuring the Safety of our Children</b>	Raises penalty for recklessly shooting a child under 18 (PL 120.05)	At least 2, but no more than 7, years in prison	Previously punishable by up to one year in jail
	Raises the penalty for possessing a firearm, rifle or shotgun on school grounds. (PL 265.01-a)	1½ to 4 years in prison	Previously punishable by up to one year in jail

# Enhanced Penalties

	New Law	Penalty	Previous Law
<b>Keeping Guns Out of the Wrong Hands</b>	Raises penalties for purchasing a gun for a person who is not eligible to purchase; and prohibits giving, lending or disposing of a weapon to an ineligible person. (PL 265.17)	2 $\frac{1}{3}$ to 7 years in prison	Previously only purchase for a disqualified person was prohibited and punishable by only up to 1 year in jail
	Raises penalties for failing to report theft of a rifle, shotgun or firearm and creates new crime for failure to report theft of ammunition. (PL 400.10)	Up to one year in jail	Previously did not incl. ammunition and the failure to report was punishable by a \$100 fine
<b>Reducing Gang Violence</b>	Prohibits organized criminal activity that includes armed felonies. (PL 460.22)	25 years to life in prison	Increases penalty from maximum of 15 years to maximum of 25 to life by adding armed felonies

# Mandatory Suspension/Revocation of Firearms License

- Involuntary Commitment and MHL 9.46
- Criminal Court – Upon conviction of felony or serious offense...
  - Judge **must** demand surrender of license and all firearms, shotguns and rifles
- Upon the issuance of an Order of Protection or a Temporary Order of Protection ...
  - Judge **must determine** if a firearms license should be suspended or revoked
  - Judge **must revoke** the license
    - When the person threatened to use a firearm unlawfully
    - When the person causes injury to another when violating an order



# Removal of Weapons

- The SAFE Act does not require any additional or different process for removal.
- This will remain a function of law enforcement and will be carried out according to existing protocols .

# Removal of Weapons – From Whom

- The SAFE Act does provide for removal in two additional circumstances:
  1. individual likely to engage in conduct that would result in serious harm to self or others – 9.46
    - NOTE: Mental health professionals and the public should call 911 in an emergency. SAFE Act does not replace that function
  2. individual is prohibited from possessing assault weapon (e.g., is a convicted felon or has been involuntarily committed)

# Removal of Weapons – How

- Individual likely to engage in conduct that would result in serious harm to self or others
  - State Police will notify licensing authority
  - licensing authority will revoke license and refer to law enforcement
  - law enforcement will take action with appropriate authority (e.g., search warrant)
- Individual is prohibited from possessing assault weapon (e.g., is a convicted felon or has been involuntarily committed)
  - State Police will notify law enforcement
  - law enforcement may consider consulting DA
  - law enforcement may consider applying for a search warrant

# What the SAFE Act Means for Law Enforcement Officers

# Law Enforcement Exemptions

- The law ensures that the existing exemptions for active law enforcement are continued, including the ability to:
  - Purchase and possess assault weapons
  - Purchase and possess large capacity magazines
  - Load weapons with more than 7 rounds
  - Possess firearms on school grounds

# Large Capacity Magazines

- End the grandfathering of pre-94 magazines: Magazines capable of holding more than 10 rounds may no longer be possessed or sold, except to NYS dealers, out-of-state, or to law enforcement.
- 10 round magazines remain lawful to possess, purchase and transfer.

# Large Capacity Magazines

- Owners have until January 15, 2014 to dispose of magazines with a capacity over 10 rounds owned prior to January 15, 2013, or to permanently modify them to hold 10.
- Exemption for curio or relic magazines (made at least 50 years before current date). Must be registered and can be transferred.

# Large Capacity Magazines

- Except at a shooting range or competition, no more than 7 rounds may be loaded in a magazine at any time. Law enforcement is exempt from this provision.



# Large Capacity Magazines

- Active law enforcement may continue to possess large capacity magazines with a capacity greater than 10 rounds.

# Keeping Guns Out of the Wrong Hands

# Private Sales

- All private gun sales must be facilitated by an FFL, who runs a NICS check on the buyer
- Exemption for immediate family (spouse, domestic partner, children, step-children)

# Safe Storage

- New Penal Law section 265.45 requires safe storage of a weapon when the owner resides with someone who has certain criminal convictions, been involuntarily committed or is subject to a domestic violence order of protection.
- Violation is a class A misdemeanor.

# Assault Weapons

- SAFE Act contains “one-feature” military-style assault weapon definition
- If assault weapon lawfully possessed before January 15, 2013, owner may:
  - Keep, but register by April 15, 2014
  - Transfer to NYS dealer, out-of-state, or to law enforcement
  - Modify the weapon

# Assault Weapons Registration

- Owners of assault weapons prior to January 15, 2013 have until April 15, 2014 to register with State police through a simple and free process.
- Registered owners will automatically be checked to ensure convicted felons, those with a history of involuntary commitment and other prohibited gun owners under federal law do not have assault weapons.

# Assault Weapons

- Active law enforcement officers may keep any assault weapon and do not need to register
- May keep into retirement if:
  - Assault weapon was lawfully possessed by officer prior to January 15, 2013 AND
  - Officer registers the weapon by April 15, 2014

# Kendra's Law

## Extended and Strengthened

### **The NY SAFE Act:**

- Extends Kendra's Law through 2017.
- Extends the duration of the initial assisted out-patient treatment (AOT) order from 6 months to one year.
- Requires a review before the AOT order for a mentally ill patient is terminated.
- Requires an assisted out-patient treatment order to follow a person from one county to another if he or she changes residence;
- Requires the Office of Mental Hygiene (OMH) to conduct an AOT assessment when a state prisoner is being discharged to the community from an OHM hospital.



# New Mental Hygiene Law 9.46

1. A “mental health professional” must report a person who “is likely to engage in conduct that would result in serious harm to self or others” to County Mental Health Director as soon as practicable.
2. If Director of Community Services agrees that the person is likely to engage in such conduct, he/she forwards report to NYS Division of Criminal Justice Services (DCJS).
3. DCJS and State Police determine whether a subject of a 9.46 report has a pistol permit or registered assault weapon. If so, State Police notify the local licensing authority.
4. In addition, DCJS compares new applications for firearms licenses against the 9.46 forms and notifies the appropriate agency if there is a match.
5. Licensing authority notifies local law enforcement to remove gun(s).

Starting in 2014...



# Ammunition

- The law will require background checks on ammunition purchases beginning in 2014.
- Ammunition purchases will be recorded in real-time.
- Ban on direct internet sales—all sales must be completed in person.

# Recertification

- All pistol permit holders and assault weapons registrants must recertify every 5 years
- Current pistol permit holders must recertify by January 15, 2018

Questions?