

2013 Legislative Review

By Susan Bryant*

Weapons and Ammunition—NY SAFE Act

➤ **Chap. 1 (S.2230) (New York Secure Ammunition and Firearms Enforcement Act). Effective: Varies (as amended by Chap. 57, Part FF and Chap. 98)**

The New York Secure Ammunition and Firearms Enforcement Act of 2013 (NY SAFE Act) includes multiple amendments and additions to the Criminal Procedure Law (CPL), Penal Law, Family Court Act (FCA), Domestic Relations Law (DRL), and Mental Hygiene Law.

New crimes include:

- Criminal possession of a firearm (Penal Law § 265.01-b), a class E felony;
- Aggravated criminal possession of a weapon (§ 265.19);
- Aggravated enterprise corruption (§ 460.22);
- Safe storage of rifles, shotguns, and firearms when the owner lives with a person who is prohibited from possessing such weapons (§ 265.45);
- Unlawful possession of a large capacity ammunition feeding device (§ 265.36);
- Unlawful possession of certain ammunition feeding devices (§ 265.37); and
- “Mark’s Law,” which creates a new category of aggravated murder when the intended victim was a first responder (§ 125.26) and adding that category to the list of victims under first-degree murder (§ 125.27).

Other offenses have been upgraded and amended and the definitions of assault weapons (Penal Law § 265.00[22]) and large capacity ammunition feeding devices (§ 265.00[23]) have been amended.

Other changes relate to the mandatory suspension or revocation of a person’s firearms license when a court grants a temporary order of protection or order of protection under CPL § 530.14(1)-(3), upon a finding of a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons protected by the order. Similar amendments have been made to DRL §§ 240(3) and 252(9) and FCA §§ 842-a, 846-a, and FCA §§ 446-a, 552, 656-a, 780-a, and 1056-a have been added. The law also makes amendments to licensing, creates a statewide license and record database, and enacts new sections on sellers of ammunition and reporting of theft or loss of a firearm, rifle, or shotgun.

A section-by-section summary of the NY SAFE Act (chapters 1 and 57) is available by contacting the Backup Center. The state has created a website about the SAFE

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Act, which is available at www.governor.ny.gov/nysafe-act/gun-reform.

Chapter 98 amends Penal Law §§ 265.00, 265.20, and 400.00 to create a limited exception to the limitations on possession of large capacity ammunition feeding devices and assault weapons for qualified retired New York or federal law enforcement officers.

Penal Law

➤ **Chap. 162 (S.1079-A) (Intentional killing of police dog or horse). Effective: November 1, 2013.**

Adds Penal Law § 195.06-a, making it a class E felony to intentionally kill a police work dog or police work horse while the dog or horse “is in the performance of its duties and under the supervision of a police officer.”

➤ **Chap. 172 (A.2623-A) (Aggravated assault upon a child — look-back period extended). Effective: July 29, 2013.**

Amends Penal Law § 120.12 to expand the look-back period for prosecutions of aggravated assault upon a child less than eleven. Before the amendment, a defendant 18 years old or older could be charged with this Class E felony if he or she committed third-degree assault against a child less than eleven and had previously been convicted of such crime against a child less than eleven within the preceding three years. The new look-back period is ten years.

➤ **Chap. 180 (A.1394-A) (Aggravated harassment of employee by inmate — throwing contents of toilet bowl). Effective: November 1, 2013.**

Amends Penal Law § 240.32 to add throwing the contents of a toilet bowl to actions that constitute aggravated harassment of an employee by an inmate.

➤ **Chap. 186 (A.3180-A) (Unlawful manufacture, production, or reproduction of VINs). Effective November 1, 2013.**

Adds a new subdivision (4) to Penal Law § 170.65 that provides that a person is guilty of forgery of a vehicle identification number (VIN) when:

“He or she, with the intent to defraud, knowingly manufactures, produces or reproduces a vehicle identification number label, sticker or plate which was not manufactured, produced or reproduced in accordance with the rules and regulations promulgated by the United States National Highway Safety Administration and/or in accordance with the provisions of the state vehicle and traffic law.” (Class E felony).

➤ **Chap. 259 (S.4160-A) (Second-degree assault of a prosecutor). Effective: January 27, 2014.**

Amends Penal Law § 120.05(3) and (11) to make it a class D felony to assault a prosecutor, as defined in CPL § 1.20(31), with the intent to prevent the prosecutor from performing a lawful duty or with the intent to cause physical injury while the prosecutor is performing an assigned duty.

➤ **Chap. 356 (S.337-A) (Restitution for volunteer fire companies). Effective: September 27, 2013.**

Amends Penal Law § 60.27(10) to add volunteer fire companies to the list of victims that may receive restitution for out-of-pocket losses in first-, second-, and third-degree arson cases.

➤ **Chap. 525 (A.7182) (Refund of surcharges or fees — procedure). Effective: December 18, 2013.**

Amends Penal Law § 60.35(4) to conform the law on refunds of surcharges or fees to the current practice so that applications for such refunds are sent to the department, agency, or court that collected the surcharge or fee, except in town and village court cases, rather than the State Comptroller. Applications for refunds of surcharges or fees collected in a town or village court still must be made to the Comptroller.

➤ **Chap. __ (S.4664-A) (Graduated probation sentences, pre-sentence investigations in NYC). Effective: Upon Governor's signature, with exceptions noted below.**

Amends Penal Law § 65.00(3) to give judges discretion in setting the term of probation for unclassified misdemeanors and most felonies and class A misdemeanors. For felonies listed in § 65.00(3)(a)(i), the court will be able to choose a period of probation of three, four, or five years; for class A misdemeanors other than sexual assault, and for unclassified misdemeanors, the court will be able to impose a probation term of two or three years. The bill also amends Penal Law § 65.00(4) to provide that, if during a period of probation less than the maximum term, an alleged violation is sustained and the court continues or modifies the sentence, "the court may also extend the remaining period of probation up to the maximum term authorized by [65.00];" a similar amendment is made to CPL § 410.70(5). These amendments will apply to offenses that are committed on or after the date the bill is signed, as well as offenses committed before that date where sentence has not yet been imposed.

The bill also amends CPL § 390.20(5) to provide that, in New York City, a pre-sentence investigation and report shall not be required where a negotiated prison term of one year or less has been mutually agreed upon by the parties with the judge's consent, as a result of a conviction or revocation of a probation sentence. This part of the bill will take effect 90 days after it is signed.

Note: This bill was passed by the Senate and Assembly on June 19, but has not been sent to the Governor for signature.

Criminal Procedure Law

➤ **Chap. 7 (A.196) (Final order of observation — transmission of names of possible victims). Effective: March 15, 2013.**

Amends CPL §§ 730.40(1) and 730.50(1) to require, upon the issuance of a final order of observation, the district attorney to send to the Commissioner of the Office of Mental Health or the Commissioner of the Office for Persons with Developmental Disabilities a list of names and contact information of persons who may reasonably be expected to be the victim of any assault, violent felony offense, or offense listed in CPL § 530.11 that would be carried out by the committed person. Also makes conforming amendments to CPL §§ 730.40(2), 730.50(1), and 730.60(6) and Mental Hygiene Law § 29.11.

➤ **Chap. 287 (S.5125) (Local criminal court jury selection). Effective: July 31, 2013 (applies to trials commenced on or after that date).**

Amends the first sentence of CPL § 360.20 to provide: "If no challenge to the panel is made as prescribed by section 360.15, or if such challenge is made and disallowed, the court must direct that the names of not less than six members of the panel be drawn and called." [Underlined text is new.]

➤ **Chap. 480 (A.6547-B) (Order of protection — person in whose favor the order is issued may not be charged with/arrested for violating the order). Effective: November 13, 2013.**

Amends CPL § 140.10(4) to provide that the person in whose favor an order of protection or temporary order of protection is issued "may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order." Also amends CPL § 530.12(6), (8) to require that such orders state that they will "remain in effect even if the protected party has, or consents to have, contact or communication with the party against whom the order is issued" and can only be modified or terminated by the court, and that a protected party cannot be charged with or arrested for violating such an order. Makes similar amendments to DRL §§ 240(3)(b) and 252(2) and FCA §§ 155(3), 168(3), 446, 551, 656, 759, 842, 846, and 1056. The amendments to the DRL, FCA § 168(3), and CPL § 530.12(6) are effective January 12, 2014 and apply to orders issued on or after that date.

➤ **Chap. __ (A.8071-A) (16- and 17-year old charged with a prostitution offense — conversion to PINS proceeding). Effective: Upon Governor's signature.**

Adds a new CPL § 170.80, Proceedings regarding certain prostitution charges; certain teenagers, which provides:

Notwithstanding any other provision of law, when a person is arrested for prostitution or loitering for the purposes of prostitution and such offense allegedly occurred when the person was sixteen or seventeen years of age:

1. unless, after consultation with counsel a knowing and voluntary plea of guilty has been entered to such charge, any judge or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel, convert such charge and retain it as a person in need of supervision proceeding for all purposes and shall have the authority to grant any relief available under article seven of the family court act.

2. Any adverse finding and all records of the investigation and proceedings relating to such charge shall be promptly expunged upon the person's eighteenth birthday or the conclusion of the proceedings on the charge before the court, whichever occurs later. In the event of a conviction or plea of guilty to such charge or charges of prostitution or loitering for the purposes of prostitution as described in the opening paragraph and subdivision one of this section, the court must find that the person is a youthful offender and proceed in accordance with article seven hundred twenty of this chapter, provided, however, that where the conviction for which the youthful offender finding is substituted is loitering for the purposes of prostitution as defined in section 240.37 of the penal law, the available sentence shall be the sentence that may be imposed for a violation as defined in the penal law.

Note: This bill was passed by the Senate and Assembly on June 21, but has not been sent to the Governor for signature.

Vehicle and Traffic Law

➤ **Chap. 169 (A.2285-A) (Ignition interlock device laws expanded). Effective: November 1, 2013.**

Amends several provisions of the ignition interlock provisions of Leandra's Law:

- VTL § 511(3)(a) is amended to add subparagraph (iv) to make it first-degree aggravated unlicensed operation of a motor vehicle to operate a motor vehicle while holding a conditional license issued pursuant to VTL § 1196(7)(a) and while under the influence of alcohol or a drug under VTL § 1192(1)-(5).
- VTL § 1193(1)(b), (c) is amended to:

- apply the ignition interlock requirement to youthful offenders;
 - extend the minimum ignition interlock period to 12 months, but allow the court to terminate the period earlier if the person provides proof that a device was installed and maintained for at least 6 months; and
 - provide that the interlock period starts from the earlier of the date of sentencing or the date a device was installed in advance of sentencing.
- VTL § 1198(4)(a) is amended to provide that good cause for failure to install a device may include a finding that the defendant does not own a motor vehicle if the defendant states under oath that he/she does not own a motor vehicle and will not operate one during the ignition interlock period; and to give the term "owner" the same meaning as in VTL § 128.

➤ **Chap. 55 (S.2605-D, Part C) (Fines for texting and cell phone violations). Effective: July 26, 2013.**

Increases the fines for violations of VTL §§ 1225-c (use of mobile telephones) and 1225-d (use of portable electronic devices): first violation—between \$50 and \$150; second violation in 18 months—between \$50 and \$200; and third or subsequent violation in 18 months—between \$50 and \$400. Also amends VTL § 1809-e(1) to increase the surcharge to \$28 (up from \$20) and § 1809(2) to increase the maximum total of the crime victim assistance fees and mandatory surcharges to \$196 (up from \$180), and adds a new VTL § 1809-aa that imposes a mandatory surcharge of \$25 for certain parking violations (VTL §§ 1200, 1201, and 1202).

➤ **Chap. 58 (S.2608-D, Part C) (Texting and cell phone use by commercial drivers, expands definitions). Effective: October 28, 2013.**

Amends the definition of portable electronic device in VTL § 1225-d(2)(a) to include "any other electronic device when used to input, write, send, receive, or read text for present or future communication." And the term "using" in § 1225-d(2)(b) is now defined as "holding a portable electronic device while viewing, taking, or transmitting images, playing games, or, for the purpose of present or future communication: performing a command or request to access a world wide web page, composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, instant messages, or other electronic data" (underlined text is new).

Also makes amendments to VTL §§ 510-a(4)(a), 1225-c, and 1225-d regarding the use of cell phones and portable electronic devices when driving commercial motor vehicles.

- **Chap. 91** (S.5656) (Suspension of probationary and junior licenses — texting and cell phone violations). Effective: July 1, 2013.

Amends VTL §§ 510-b(1) and 510-c(2), the laws governing probationary and junior licenses, to require license suspension upon conviction for VTL §§ 1225-c and 1225-d violations.

Parole and Corrections

- **Chap. 368** (S.4248-A) (Access to statewide registry of orders of protection and arrest warrants). Effective: October 27, 2013.

Amends Executive Law § 221-a to give employees of local correctional facilities and the Department of Corrections and Community Supervision who are responsible for monitoring, supervising, or classification of inmates or parolees access to the statewide registry of orders of protection and warrants issued in domestic violence cases and the ability to disclose information about such orders of protection and warrants under specified circumstances.

- **Chap. 437** (A.5008-B) (Routine health care services to local jail inmates under 18 years of age). Effective: October 23, 2013.

Amends the Penal Law and Correction Law to allow local jails to provide routine medical, dental, and mental health services to inmates under 18 years of age who have not received consent from a parent or guardian. The bill requires the court to ask whether the defendant's parents or legal guardian, if present at sentencing, will give the defendant the capacity to consent to such routine care. If consent is not obtained before commitment, the commitment order will be deemed to give the defendant the capacity to consent and the sheriff will not need to get judicial consent for routine care; the bill does not preclude a parent or legal guardian from objecting to treatment.

Agriculture and Markets Law

- **Chap. 531** (S.2665-B) (District Attorney — authority to petition on behalf of impounding organizations in connection with animal cruelty and animal fighting convictions). Effective: March 19, 2014.

Authorizes a district attorney who is prosecuting charges under Agriculture and Markets Law § 353-d, 373, or 375 (animal cruelty or animal fighting) to file and obtain, on behalf of an "impounding organization" (*ie*, a society for the prevention of cruelty to animals, humane society, pound, or animal shelter), an order requiring the person from whom the animal is seized or the owner of the animal to post a security for the reasonable expenses expected to be incurred by the organization.

Family Court

- **Chap. 371** (S.5609-A) (Visitation and custody orders — children conceived during sex offense). Effective: September 27, 2013.

Amends DRL § 240 to create a rebuttable presumption that it is not in a child's best interests to be placed in the custody of or to visit with a person who has been convicted of one or more of specified sex offenses in this state or the equivalent of such offenses in another state when the child who is the subject of the proceeding was conceived as a result of such offense or offenses, and also amends DRL § 111-a and Social Services Law (SSL) § 384-c to provide that the notice provisions in those sections shall not apply to such a person.

- **Chap. 402** (S.4644-C) (Petition to vacate voluntary acknowledgement of paternity). Effective: January 19, 2014.

Amends FCA § 516-a and Public Health Law (PHL) § 4135-b to provide that when a person under age 18 signs a voluntary acknowledgement of paternity, that person can file a petition to vacate the acknowledgment at any time up to 60 days after reaching the age of 18 or up to 60 days after the date on which the respondent must answer a petition relating to the child if the respondent is advised of the right to file a petition to vacate, whichever is earlier.

- **Chap. 430** (A.2600) (Severe or repeated abuse and diligent efforts). Effective: October 23, 2013.

Amends FCA § 1051(e) to provide that, in cases where the court makes a finding of abuse and chooses to enter a finding, based on clear and convincing evidence, of severe or repeated abuse, as defined in SSL § 384-b(8)(a)(i)-(iii) or (8)(b)(i) or (ii), the court does not need to also make findings regarding diligent efforts in order for the severe or repeated abuse finding to be admissible in a later termination of parental rights proceeding. Also amends SSL § 384-b(8)(a) and (b) to add Penal Law §§ 130.95 and 130.96 to the list of sex offenses and other felonies that constitute severe abuse.

- **Chap. 526** (A.7400) (Family offenses — larceny and coercion added). Effective: December 18, 2013.

Amends FCA § 812(1) to give the Family Court concurrent jurisdiction over proceedings concerning acts between certain family or household members that constitute identity theft (first, second, or third degree), grand larceny (third or fourth degree), or second-degree coercion as set forth in Penal Law § 135.60(1), (2), or (3). Also makes conforming amendments to FCA §§ 821, 446, 551, 656, 842, and 1056, DRL §§ 240 and 252, and CPL § 530.11 and 530.12.

Judiciary

- [Chap. 283](#) (S.5078) (Attorneys — reporting of criminal convictions). Effective: July 31, 2013 (applies to convictions on or after that date).

Amends Judiciary Law § 90(4)(c) [Admission to and removal from practice by appellate division; character committees] to require that attorneys report a conviction of a crime in a town or village court (a court not of record) to the Appellate Division.

- [Chap. 548](#) (A.6552-B) (City Court judgeship modifications). Effective: April 1, 2014.

The bill changes existing judgeships from part-time to full-time or from quarter-time to half-time in Albany, Auburn, Binghamton, Buffalo, Cortland, Ithaca, Jamestown, Kingston, Lockport, Middletown, New Rochelle, Norwich, Oneida, Oneonta, Port Jervis, Rome, Rye, Salamanca, Saratoga Springs, Watertown, and White Plains.

On January 1, 2015, the following courts will get an additional full-time judge: Buffalo City Court (will have 14 full-time judges), Newburgh (will have 3 full-time judges), Rochester (will have 10 full-time judges), Schenectady (will have 4 full-time judges), Syracuse (will have 9 full-time judges), Troy (will have 2 full-time judges), and Yonkers (will have 7 full-time judges).

The bill also makes the existing part-time judgeships in Binghamton, Ithaca, and Lockport elected positions; currently the judges in those courts are appointed. And it expands the residency requirement for one city court. A table of the changes appears as Appendix A in the memo-

randum in support of the bill, which can be found at the link above.

Miscellaneous

- [Chap. 201](#) (A.6378-B) (Sale of counterfeit or non-functional airbag). Effective: November 1, 2013.

Adds a new section 349-e to the General Business Law, to make it a class A misdemeanor to knowingly: make, offer to distribute, distribute, offer to sell, sell, install or reinstall a counterfeit or non-functional airbag; offer to do so so that “the readiness indicator light ... falsely displays that the airbag is in proper working order”; or represent to another that a counterfeit or non-functional airbag installed or reinstalled in a motor vehicle is an airbag. The bill also provides for a separate civil proceeding and fines.

- [Chap. 341](#) (S3469-A) (Adds “bath salts” to Schedule I). Effective: December 11, 2013.

Amends PHL § 3306 to add substituted cathinones (“bath salts”), which are chemically related to methamphetamines and ecstasy, to the list of Schedule I stimulants.

Sunset Dates Extended

As part of the state budget, the Legislature has extended the sunset dates of the determinate sentencing laws and other provisions of the CPL, Correction Law, Penal Law, and VTL from September 1, 2013 to September 1, 2015. [L 2013, ch 55, Part E](#). ☺

Chief Defender Convening Dec. 5, 2013

NYSDA hosted a Chief Defender Convening in Albany in early December. The morning agenda item was an update by the Indigent Legal Services Office. In the afternoon, a variety of topics put on the agenda by Chief Defenders were discussed, including budgetary issues, discovery reform, raising the age of criminal responsibility (see p. 6) and confronting the racial disparities found in the justice system (see “Ulster County Public Defenders Put Racial Disparity on the Record” on p. 6).



Chief Defenders and NYSDA staff await the start of the Convening discussions.