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^o New Jersey Bar

November 8, 2017

Via ECF

Ms. Catherine O'Hagan Wolfe,
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: Copeland, et al. v. Cyrus Vance, Jr.
Docket Number 17-0474-cv**

**Response to Notice of Supplemental Authority Pursuant to Fed. R.
App. P. 28(j) Filed by Appellee Cyrus Vance, Jr.**

Dear Ms. O'Hagan Wolfe:

Plaintiffs-Appellants hereby respond to the Notice of Supplemental Authority filed by Defendant-Appellee Cyrus Vance, Jr. ("DA") pursuant to Rule 28(j).

On October 23, 2017, New York Governor Andrew Cuomo again vetoed the most recent attempt by the New York State Legislature to fix the current law which Defendants regularly use to arrest and prosecute ordinary individuals for possessing ordinary pocket knives.

The DA takes a position at the end of his letter which is hard to reconcile with the facts. The DA says: "whether and to what extent the public safety risk is outweighed by legitimate uses of folding knives that meet the statutory definition is an issue for the elected branches of government and one that they are attempting to address." Yet, two years in a row, the DA has, himself, *aggressively opposed* such legislative efforts and has now twice convinced the Governor to veto precisely such an effort undertaken by a nearly unanimous Legislature in both instances. This year the vote in favor of the bill was 136-1 in the Assembly and 61-1 in the Senate (*see* Exhibit A attached hereto).

Ms. Catherine O'Hagan Wolfe

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In twice securing the Governor's veto, the DA has succeeded in thwarting these legislative attempts to fix this problem, even in the face near unanimity in the Legislature. In fact, the Governor and Defendants DA and City of New York are essentially the only ones who have opposed this effort (*see* Exhibit B, numerous letters of support from NYCLU, Legal Aid Society, NAACP, AFL-CIO and other unions, sportsmen's groups, etc).

This is an unconstitutional enforcement of the law that only these Defendants favor. The Legislature sought to fix the law by deleting its reference to centrifugal force – the very source of the unconstitutional Wrist Flick Test. Yet, Defendants have successfully enlisted the Governor's help to block any legislative effort to change the law for the better so that it comports with due process.

Respectfully submitted,

/s/ Daniel L. Schmutter
DANIEL L. SCHMUTTER,
Counsel for Appellants

The body of this letter contains 317 words.

DLS/srs

cc: Counsel of record via ECF

EXHIBIT “A”

EXHIBIT “A”

A05667 Summary:

BILL NO A05667A

SAME AS SAME AS

SPONSOR Quart

COSPNSR

MLTSPNSR

Amd \$265.00, Pen L

Relates to the definition of a gravity knife; removes reference to the application of centrifugal force from the definition of a gravity knife.

A05667 Floor Votes:

DATE: 05/10/2017 Assembly Vote

YEA/NAY: 136/1

Abbate	Y	Crouch	Y	Goodell	Y	Lifton	Y	O'Donnell	Y	Simanowitz	ER
Abinanti	Y	Curran	Y	Gottfried	Y	Lopez	Y	Ortiz	Y	Simon	Y
Arroyo	Y	Cusick	Y	Graf	ER	Lupardo	Y	Otis	Y	Simotas	Y
Aubry	Y	Cymbrowitz	Y	Gunther	Y	Lupinacci	Y	Palmesano	Y	Skartados	Y
Barclay	Y	Davila	Y	Harris	Y	Magee	Y	Palumbo	Y	Skoufis	Y
Barnwell	Y	De La Rosa	Y	Hawley	Y	Magnarelli	Y	Paulin	Y	Solages	Y
Barrett	Y	DenDekker	ER	Hevesi	ER	Malliotakis	Y	Peoples-Stokes	Y	Stec	Y
Barron	Y	Dickens	Y	Hikind	ER	Mayer	Y	Perry	Y	Steck	Y
Benedetto	Y	Dilan	Y	Hooper	Y	McDonald	Y	Pheffer Amato	Y	Stirpe	Y
Bichotte	ER	Dinowitz	Y	Hunter	Y	McDonough	Y	Pichardo	Y	Thiele	Y
Blake	Y	DiPietro	Y	Hyndman	Y	McKevitt	Y	Pretlow	Y	Titone	Y
Blankenbush	Y	D'Urso	Y	Jaffee	Y	McLaughlin	Y	Quart	Y	Titus	Y
Brabenec	Y	Englebright	Y	Jean-Pierre	Y	Mill B	Y	Ra	NO	Vanel	Y
Braunstein	Y	Errigo	Y	Jenne	Y	Mill MG	ER	Raia	Y	Walker	Y
Brindisi	Y	Fahy	Y	Johns	Y	Mill ML	Y	Ramos	Y	Wallace	Y
Bronson	Y	Farrell	Y	Jones	Y	Montesano	Y	Richardson	Y	Walsh	Y
Buchwald	Y	Finch	ER	Joyner	Y	Morelle	Y	Rivera	Y	Walter	Y
Butler	Y	Fitzpatrick	Y	Kavanagh	Y	Morinello	Y	Rodriguez	Y	Weinstein	Y
Byrne	Y	Friend	Y	Kearns	Y	Mosley	Y	Rosenthal	Y	Weprin	Y
Cahill	Y	Galef	Y	Kim	Y	Moya	Y	Rozic	Y	Williams	Y
Carroll	Y	Gantt	ER	Kolb	Y	Murray	Y	Ryan	Y	Woerner	Y
Castorina	Y	Garbarino	ER	Lalor	Y	Niou	Y	Santabarbara	Y	Wright	Y
Colton	Y	Giglio	Y	Lavine	Y	Nolan	ER	Schimminger	Y	Zebrowski	Y
Cook	Y	Gjonaj	Y	Lawrence	Y	Norris	Y	Seawright	Y	Mr Spkr	Y
Crespo	Y	Glick	Y	Lentol	Y	Oaks	Y	Sepulveda	ER		



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Senate Bill S4769A

2017-2018 Legislative Session

Relates to the definition of a gravity knife

Download Bill Text PDF

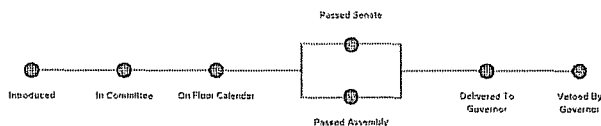
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SPONSORED BY

Diane J. Savino
(D, 19, 23RD SENATE DISTRICT)

CURRENT BILL STATUS VIA A5667 - VETOED BY GOVERNOR



ACTIONS

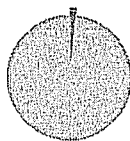
VIEW ACTIONS (14)

VOTES

HIDE VOTES

JUN 21, 2017 - FLOOR VOTE

A5667A



61

AYE

1

NAY

1	Ayotte
0	DeSantis
0	Malone

HIDE FLOOR VOTE DETAILS

Floor Vote: Jun 21, 2017

AYE (61)

NAY (1)

Aldabe	Aldabe	Golden
Alcantara	Amendore	
Avella	Bailey	
Benjamin	Bonack	
Bryle	Brodin	
Brooks	Carlucci	
Carmia	Cruz	
DeFrancisco	Fox	
Eden	Felder	
Flanagan	Fonke	
Galvin	Giannone	
Gillio	Hamilton	
Hannon	Holmes	
Hughes	Jacob	
Kaminsky	Kennedy	
Klein	Krueger	
Lanza	Larkin	
Lahner	LaValle	
Little	Macmillan	
Marshall	Montgomery	
Murphy	O'Mara	
O'Neil	Packer	
Peralta	Persaud	

Senate Bill S4769A

VETOED BY GOVERNOR

2017-2018 Legislative Session

Relates to the definition of a gravity knife

[⏏ DOWNLOAD BILL TEXT PDF \(HTTP://LEGISLATION.NYSENATE.GOV/PDF/BILLS/2017/S4769A\)](http://legislation.nysenate.gov/pdf/bills/2017/S4769A)

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[Diane J. Savino \(/Senators/diane-j-savino\)](#)
(D, IP, WF) 23RD SENATE DISTRICT

CURRENT BILL STATUS VIA A5667 - VETOED BY GOVERNOR



DO YOU SUPPORT THIS LEGISLATION?



AYE



NAY

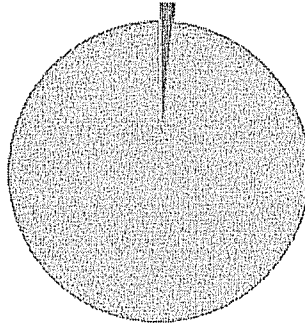
ACTIONS

[VIEW ACTIONS \(14\)](#)

VOTES

HIDE VOTES

JUN 21, 2017 - FLOOR VOTE

A5667A (</legislation/bills/2017/a5667/amendment/a>)**61 AYE****1 NAY**

1 ABSENT
 0 EXCUSED
 0 ABSTAINED

HIDE FLOOR VOTE DETAILS

Floor Vote: Jun 21, 2017

AYE (61)

[Addabbo \(/Senators/joseph-p-addabbo-jr\)](/Senators/joseph-p-addabbo-jr)[Alcantara \(/Senators/marisol-alcantara\)](/Senators/marisol-alcantara)[Avella \(/Senators/tony-avella\)](/Senators/tony-avella)[Benjamin \(/Senators/brian-benjamin\)](/Senators/brian-benjamin)[Boyle \(/Senators/phil-boyle\)](/Senators/phil-boyle)[Brooks \(/Senators/john-e-brooks\)](/Senators/john-e-brooks)[Comrie \(/Senators/leroy-comrie\)](/Senators/leroy-comrie)[DeFrancisco \(/Senators/john-defrancisco\)](/Senators/john-defrancisco)[Dilan \(/Senators/martin-malav%C3%A9-dilan\)](/Senators/martin-malav%C3%A9-dilan)[Flanagan \(/Senators/john-j-flanagan\)](/Senators/john-j-flanagan)[Gallivan \(/Senators/patrick-m-gallivan\)](/Senators/patrick-m-gallivan)[Griffo \(/Senators/joseph-griffo\)](/Senators/joseph-griffo)[Akshar \(/Senators/fred-akshar\)](/Senators/fred-akshar)[Amedore \(/Senators/george-amedore-jr\)](/Senators/george-amedore-jr)[Bailey \(/Senators/jamaal-bailey\)](/Senators/jamaal-bailey)[Bonacic \(/Senators/john-j-bonacic\)](/Senators/john-j-bonacic)[Breslin \(/Senators/neil-d-breslin\)](/Senators/neil-d-breslin)[Carlucci \(/Senators/david-carlucci\)](/Senators/david-carlucci)[Crocì \(/Senators/thomas-d-croci\)](/Senators/thomas-d-croci)[Diaz \(/Senators/ruben-diaz\)](/Senators/ruben-diaz)[Felder \(/Senators/simcha-felder\)](/Senators/simcha-felder)[Funke \(/Senators/rich-funke\)](/Senators/rich-funke)[Gianaris \(/Senators/michael-gianaris\)](/Senators/michael-gianaris)[Hamilton \(/Senators/jesse-hamilton\)](/Senators/jesse-hamilton)

NY State Senate Bill S4769A

<https://www.nysenate.gov/legislation/bills/2017/S4769/amendment/A>**NAY (1)**[Hannon \(/Senators/kemp-hannon\)](#)[Helming \(/Senators/pamela-helming\)](#)[Hoylman \(/Senators/brad-hoylman\)](#)[Jacobs \(/Senators/christopher-jacobs\)](#)[Golden \(/Senators/martin-j-golden\)](#)[Kennedy \(/Senators/timothy-m-kennedy\)](#)[Kaminsky \(/Senators/todd-kaminsky\)](#)**ABSENT (0)**[Krueger \(/Senators/liz-krueger\)](#)[Lanza \(/Senators/andrew-j-landa\)](#)[Larkin \(/Senators/william-j-larkin-jr\)](#)[Sanders \(/Senators/james-sanders-jr\)](#)[LaValle \(/Senators/kenneth-p-lavalle\)](#)[Latimer \(/Senators/george-latimer\)](#)[Little \(/Senators/betty-little\)](#)[Marcellino \(/Senators/carl-l-marcellino\)](#)[Marchione \(/Senators/kathleen-marchione\)](#)[Montgomery \(/Senators/velmanette-montgomery\)](#)

MAY 16, 2017 - CODES COMMITTEE VOTE

[Murphy \(/Senators/terrence-murphy\)](#)[O'Mara \(/Senators/thomas-f-omara\)](#)[Ortt \(/Senators/robert-g-ortt\)](#)[Parker \(/Senators/kevin-s-parker\)](#)[Peralta \(/Senators/jose-peralta\)](#)[Persaud \(/Senators/roxanne-j-persaud\)](#)[Phillips \(/Senators/elaine-phillips\)](#)[Ranzenhofer \(/Senators/michael-h-ranzenhofer\)](#)[Ritchie \(/Senators/patty-ritchie\)](#)[Rivera \(/Senators/gustavo-rivera\)](#)[Robach \(/Senators/joseph-e-robach\)](#)[Savino \(/Senators/diane-j-savino\)](#)[Serino \(/Senators/sue-serino\)](#)[Serrano \(/Senators/jos%C3%A9-m-serrano\)](#)[Seward \(/Senators/james-l-seward\)](#)[Squadron \(/Senators/daniel-l-squadron\)](#)[Stavisky \(/Senators/toby-ann-stavisky\)](#)[Stewart-Cousins \(/Senators/andrea-stewart-cousins\)](#)[Tedisco \(/Senators/james-tedisco\)](#)[Valesky \(/Senators/david-j-valesky\)](#)[Young \(/Senators/catharine-young\)](#)**10 AYE**

5 AYE WITH RESERVATIONS
 0 ABSENT
 0 EXCUSED
 0 ABSTAINED

SHOW CODES COMMITTEE VOTE DETAILS**BILL AMENDMENTS****A (ACTIVE)****CO-SPONSORS**



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Statement in Support of A9042 (Quart) /S3675 (Savino)

The Legal Aid Society supports the proposal to amend Penal Law 265.00 (4) and (5) to change the definition of "gravity knife" so as to exclude ordinary folding knives that are often used as tools by people who have no idea they are in violation of the law. The current law penalizes even innocent possession of any knife that can open with a strenuous flick of a wrist. It has resulted in many arrests of people who have a legitimate reason to carry a knife as a tool used in their profession or for some other innocent purpose. In our practice, we have seen many different ordinary folding knives or pocket knives prosecuted as gravity knives regardless of where it is purchased it or how it is used. Far too many people are being arrested for something that they have no idea is a violation of the law. Significant criminal justice resources are being devoted to the arrest and prosecution of these cases. People with perfectly legal uses for these tools should not be subject to arrest and prosecution.

In spite of recent efforts to curtail sale and distribution of these knives, our staff and clients report that they are still widely available, particularly in small stores and online.

Based on a recent survey of Legal Aid Society staff, below are representative examples of real cases experienced by people who were arrested for criminal possession of a weapon.

Representative Case Examples

- A 57-year-old client who works as an electrician at the Department of Education was stopped while wearing his work uniform. He had never been arrested before. He was stopped while crossing the street during work and searched. The police officer found a folding knife. The client was suspended from working while the case was being prosecuted.

- A college graduate of SUNY Stony Brook College was working as a stagehand at the Marriott Marquis in Times Square. He had never been arrested. The knife the police found was a Smith & Wesson, a gift from his girlfriend. It was the best knife he ever used

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for cutting tape/rope/zip ties for lighting and sound equipment. The client was stopped by the police while walking in Times Square. The client was planning on attending graduate school for a masters in music. A letter from his employer and information from the seller, the Smith & Wesson website, convinced the District Attorney to give the client an Adjournment in Contemplation of Dismissal.

- A client was walking with his mother, brother, and cousin in Richmond County. They had just gotten out of their car and were walking towards his uncle's house when a police officer stopped them. The knife was recovered from the client's pocket. This happened right after Hurricane Sandy and the family was going to make repairs to the house that had been damaged by the storm. The knife was purchased at a local hardware store in Brooklyn where the client lives.

- A client was on his way back to Brooklyn from a charity event at which he had been volunteering in the Bronx. He had helped to break down boxes and clean up. He is a college student with no prior arrests or criminal record. The client and his friends were entering the Kingsbridge train station. He was carrying a box and his bicycle so he had to swipe at the turnstile and then enter through the fireman's gate. He was stopped by a police officer who said he saw the knife clip protruding from his pocket. The officer was able to flick the knife open with one hand, something our client said he was never able to do. The client was then arrested. The knife was a Smith & Wesson and a representative from Smith and Wesson told us the product is not designed to open that way.

- A client in his early 20s works in the shipping and receiving department at a luggage store. His responsibilities include opening boxes. He was stopped walking through a park on his shortcut home. He had the knife because he was coming from work and had forgotten to leave it at the store. He was given the knife at work.

- A client who had a job making electrical/plumbing repairs was in his work uniform and had the knife clipped to his belt when he was arrested. He was stopped on his way into the subway at 7:00 am while carrying his toolbar. He kept the knife on his belt to have easy access to it for work purposes since he used it often during the day at work. The Assistant District Attorney and police officers had trouble opening knife by flicking it, but then an "expert" in the DA's office who can open almost any knife was brought over and he finally opened the knife. The client bought the knife at Home Depot.

- A client was acquitted after a bench trial for possession a gravity knife. The client owned his own business as a carpenter. The knife looked like a broken pocket knife. The police officer and the Assistant District Attorney insisted that it was a gravity knife despite the fact that it did not open most of the time when tested. According to the ADA and our investigator it only opened when held from the top (upside down) yet the District Attorney's Office still decided to prosecute it as a gravity knife case. The client came to court for over two years on the case until it finally went to trial.

- A client did some maintenance work in his building and was helping a neighbor install bathroom tiles. He used the knife to cut tiles. The client left work to go to a program and put the knife in his back pocket. The police stopped the client as he was

leaving the program because they thought he was shoplifting. They asked him if he had a weapon and he said, "Yes, I have a knife." The case went to trial and the client was convicted. The case was appealed to the Appellate Division, First Department. The conviction was upheld. The Appellate Division acknowledged that the client may have been cutting tiles with the knife, but said that he must have known it was an illegal gravity knife. The client was sentenced to 2 to 4 years in jail.

- A client was a wilderness guide from upstate New York who was arrested for having a gravity knife while visiting New York City. His employer verified that he used the knife for his job. The Assistant District Attorney offered an Adjournment in Contemplation of Dismissal.

- A client was arrested for possession of a gravity knife and the case was charged as a felony because he had a prior criminal conviction. The client's boss testified in the Grand Jury and stated that he knew the knife from the work site and it was not a gravity knife. The Grand Jury voted not to indict. Had the Grand Jury indicted him, the client would have been facing many years in jail.

- A client worked as a security guard at a grocery store. He had no prior arrests. He bought a knife for work. When he purchased it, the knife did not open with centrifugal force, i.e., the flick of a wrist. However, over time the screw loosened up. The client was stopped by a police officer who asked him if he had anything sharp in his pocket. The client said he had a knife in his pocket and he was arrested.

- A client was a cable technician who used a knife for his work. He was putting his laundry in his car when he was approached by the police who saw a clip on his belt. The police retrieved a knife from his pocket and arrested him.

- A client was in his 20s and had no prior record. He was stopped by the police for double parking. The police ordered the client and his friends out of the car and searched all of them. A Lansky folding knife, which had been given to the client by his father for work at their family-owned hardware store, was found on the client. The family's store actually sells the knife at the store. The father wrote a letter to the Assistant District Attorney confirming that he gave the client the knife.

Where Do People Get the Knives?

In 2010, there was an effort to stop the sale and distribution of gravity knives by large retailers. Because the knives are so widely used and distributed, however, this effort was ineffective in stopping the sale of gravity knives. Even knives that are legal at the time of sale may eventually meet the definition of a gravity knife when the screw that holds the blade loosens over time so as to allow the blade to fold open with a strong flick of the wrist.

The following is a list of locations where knives in the reported cases were purchased or where they are currently available.

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Home Depot, Smith & Wesson, Sears, Wal-mart, True Value, The Sportsman's Guide (Online), Boy Scout Camp, Bear Mountain Gift Shop, Sid's Hardware (out of business now), Army Navy Store, Harbor Freight Tools, BUDK.com, Amazon.com, many local hardware stores, and many bodegas.



MEMORANDUM OF SUPPORT

S6483 (Savino) / A9042 (Quart)

April 6, 2016

Brooklyn Defender Services ("BDS") strongly supports S6483 (Savino)/A9042 (Quart), which narrows the definitions of switchblade knives and gravity knives to exclude ordinary folding knives that are commonly sold on-line and in hardware stores to workmen and artisans, and which only specially trained law enforcement officers are able, often only after several tries, to flick open by exertion.

BDS is a comprehensive indigent legal service organization that provides innovative, multi-disciplinary, and client-centered criminal defense, family defense, immigration and civil legal services, and social work support to more than 45,000 indigent Brooklyn residents every year.

EXISTING LAW

Currently, possession of a switchblade or a gravity knife is prohibited under Penal Law § 265.01 (1), which makes possession of such knives a "strict liability" crime. In other words, simple possession of these knives, even without any criminal intent, is a crime. As you may know, possession in the Penal Law is not limited to one's person; it encompasses possession in one's car, closet and even toolbox. Under current case law, a person may be guilty of a misdemeanor for possessing a commonly-sold folding knife, even if that knife is not meant to be opened by the force of gravity, and even though the possessor is unaware that the knife could be opened in that manner. This bill would rectify that injustice by amending the statutory definitions of those knives to exclude ordinary folding knives which are not meant to be opened in the manners typical of switchblades or gravity knives.

PROPOSED AMENDMENT

This legislation would narrow the definition of switchblades and gravity knives to clarify that they "do not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife."

JUSTIFICATION

The need for this legislation is clear. Tens of thousands of New York City residents have been prosecuted for being in possession of—either on their person, or somewhere in their car or home—an instrument they use peacefully in the workplace, simply because it meets the vague legal definition of a “gravity knife.” BDS represents hundreds of clients every year who are charged with the relevant offense, Criminal Possession of a Weapon on the Fourth Degree (CPW4), including stagehands, carpenters, and movers in uniform who are caught with box cutters. **As always, it is critical to remember that those who are arrested for any reason face not only a prospective sentence handed down by a judge, but also many so-called collateral consequences that impact individuals, families and, indeed, entire communities.** ‘Criminal Possession of a Weapon in the Fourth Degree’ does not look good on a job application.

When New York criminalized “gravity knives” in the 1950’s, the term was used to describe large switchblade-like knives. However, the definition included in the law encapsulates all knives that can be opened by gravity or a centrifugal force. In modern times, New York City law enforcement officials often use the law to arrest and prosecute individuals in possession of pocket knives, utility knives, box cutters, and other items that are commonly used in many professions. A 2014 *Village Voice* analysis found 60,000 gravity knife prosecutions in the last decade. Most cases investigated by the newspaper involved instruments used for work, such as a stagehand’s utility knife, and most involved Black and/or Hispanic New Yorkers. This tracks with BDS’ experience. Our criminal defense attorneys report that nearly every client arrested on this charge is carrying a knife for work. Often, they are maintenance workers, stock room attendants, or other types of laborers. Unfortunately, many cannot obtain verification of their employment because their work is unsteady or informal. **Approximately 80% of BDS clients charged with the relevant offense are Black and/or Hispanic.** Case dispositions vary from client to client, but all are deeply impacted. They suffer the trauma of arrest and contact with the system, as well as collateral consequences relating to employment, education, family and more. The criminalization of simple possession of work tools further poisons the relationship between law enforcement and the community and expands the dragnet of our criminal justice system, all without any evidence or indication that it improves public safety.

CLIENT STORIES

The following stories provided by BDS attorneys feature individuals who would have been spared arrest under this legislation:

Mr. B was an 18 year-old freshman math major with a merit scholarship at Pace University when he was pulled over for having tinted windows. Peering inside the car, the officer found a folding knife that Mr. B, who worked at an ice skating rink, used to cut laces. Mr. B, who had no criminal history and zero arrests to date, was arrested and detained. His attorney was able to verify his work-related use of the knife and persuaded the District Attorney’s office to offer an adjournment in contemplation of dismissal (ACD) with immediate sealing to protect his scholarship. Nonetheless, untold numbers of online for-profit databases may maintain records indicating that he was arrested for “Criminal Possession Weapon-4th: Firearm/Weapon.”

Mr. W was working for a large moving and storage company in Brooklyn when he was stopped and frisked. He had not consented to the search, but the officer said he matched the description of a robbery suspect. She found a box cutter in his pocket and arrested him for CPW4. He was wearing a mover's uniform, including his company jacket, and was able to provide contact information for his employer. The complaining witness who called in the robbery told police officers that Mr. W was not the one who did it. However, his gravity knife case was open for seven months while his attorney pushed for an ACD. As you may know, the duration of an ACD is typically six months. Altogether, he had an open criminal record indicating an arrest for CPW4 for more than a year, and again, a potentially permanent record accessible through for-profit databases.

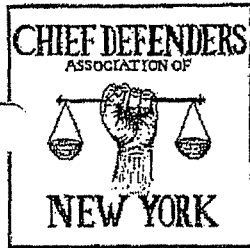
OVER-CRIMINALIZATION AS AN INEFFECTIVE, WASTEFUL PARADIGM

It is important to understand this issue in a broader context of over-criminalization. Mass incarceration is increasingly recognized as a disaster. A growing number of policymakers and other stakeholders in the justice system now favor Alternatives to Incarceration programs, and rightly so. But we must not overlook the reasons people are getting swept up in the system in the first place, including over-criminalization. To be sure, our State government deserves credit for recent efforts to make the criminal justice system more fair and effective. The Legislature successfully rolled back some of the harsh sentencing laws for drug-related offenses enacted in past decades, and Governor Cuomo has closed 13 underutilized prisons and pushed a number of criminal justice and prison reform initiatives. Thanks in part to these efforts, the prison population is down more than 28 percent since its peak in 1999. That said, this figure obscures the reality that incarceration rates throughout the United States continue to be nearly unparalleled worldwide. **Moreover, New York State continues to enact new laws increasing sentencing, post-release restrictions and other punishments without any evidence or indication of improved public safety outcomes, and criminalizing behaviors that do not improve with law enforcement intervention.**

The cost of custody for every person in New York City jails is \$167,731 per year, according to the Independent Budget Office. This figure excludes the costs of lost productivity, adverse health impacts, shelter stays related to adverse housing impacts, foster care, and, notably, the increased likelihood of reincarceration. Passing S6483 (Savino)/A9042 (Quart) to fix an obviously problematic law is urgent and important. Ultimately, the primary driver of reform must be ending all over-criminalization throughout New York State and reinvesting the savings produced by declining prison and jail populations into the communities from which our clients come.

If you have any questions, please do not hesitate to contact Jared Chausow at jchausow@bds.org or (718) 254-0700 ext. 382.

Thank you for your consideration our comments.



CHIEF DEFENDERS ASSOCIATION OF NEW YORK

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Brooklyn

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CHIEF DEFENDERS ASSOCIATION OF NEW YORK

Legislative Memo

Dated: February 22, 2016

Bill No.: A9042 (Quart) / S6483 (Savino)

Narrows the definitions of a switchblade knives and a gravity knives to exclude ordinary folding knives that are commonly sold on-line and in hardware stores to workmen and artisans, and which only specially trained law enforcement officers are able, often only after several tries, to flick open by exertion.

The CDANY SUPPORTS passage of this bill in its entirety.

Currently, possession of a switchblade or a gravity knife is encompassed by Penal Law § 265.01 (1), which makes possession of a switchblade or a gravity knife a "strict liability" crime. Under current case law, a person may be guilty of a misdemeanor for possessing a commonly-sold folding knife, even if that knife is not meant to be opened by the force of gravity, and even though the possessor is unaware that the knife could be opened in that manner. This bill would rectify that injustice by amending the statutory definitions of those knives to exclude ordinary folding knives which are not meant to be opened by exertion, but can be opened with exertion only by specially-trained law enforcement agents.

Policy Issues

True switchblade and gravity knives, banned in New York in the 1950's, have been extinct for some time, sold as antiques if at all. However, various folding and utility knives commonly sold on the internet and in other states by reputable retailers such as Home Depot may be flicked open by skilled police officers by the use of centrifugal force - - even if the objects were not meant to be opened in such a fashion and regular users would not know how to do so. Indeed until 2010, such utility knives were openly sold in New York by Home Depot and other retailers to laborers and home improvement "do-it-your-selves". In 2010, pursuant to threatened prosecution by New York County prosecutor Cyrus R. Vance, Jr., New York retailers stopped selling these items. They are still openly sold in New Jersey and on Amazon.com. In New

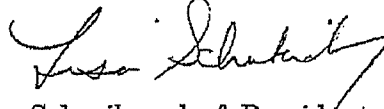
York City, and in particular New York County, artisans and laborers caught with these knives have been prosecuted for misdemeanors and - - if they have any type of prior conviction, for felonies and sent to prison. Even possession within one's own home is illegal. And under current case law, it is irrelevant whether the possessor is aware that the tool has the characteristics of a gravity or switchblade knife.

This bill would rectify this injustice by amending the definitions of such knives to exclude common folding knives.

Conclusion

The Chief Defenders Association of New York SUPPORTS this proposed legislation for the reasons stated above and urges the New York State legislature to pass it, and the Governor to sign it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Schreibersdorf", with a stylized flourish at the end.

Lisa Schreibersdorf, President
Chief Defenders Association of New York
and Executive Director, Brooklyn Defender Services



FROM THE OFFICE OF THE PRESIDENT

James J. Claffey, Jr.

Local One, I.A.T.S.E. 320 West 46th Street, 3rd Floor
New York, New York 10036 212-333-2500, Ext. 133
Fax: 212-247-1553 E-mail: jclaffey@iatse-local1.org



June 2, 2016

Dear Assemblyman Quart:

I write to express LA Local One's strong support for A9042A (Quart)/S6438A (Savino), which would narrow the definitions of switchblades and gravity knives to exclude common folding knives used by our members on the job.

Local One is the premier stagecraft Union in the world, and the oldest local of the International Alliance of Theatrical Stage Employees (I.A.T.S.E.). We have more than three thousand members serving our geographical jurisdiction of Manhattan, Staten Island, The Bronx, Westchester, Putnam, Nassau and Suffolk Counties. Our members labor behind the scenes to make Broadway a pillar of the New York City and State economy. Our stagehands are required to carry knives for work as a tool of their trade. They use folding knives to cut wire, tie line, scenery, props, and fire cables among many other things in the event of an emergency. Far too many of our members have been arrested for the folding knives they use for work. Some have been arrested on Broadway as well as many of our other theatres, while traveling to and from their way to work. The arrests have also happened despite some explaining that they use the knives for work.

The legislation that you and Senator Diane Savino proposed would clarify existing language in the penal law to ensure that working New Yorkers like our members, do not face criminal charges for carrying tools to, from and at the workplace. The current definition of gravity knives has been interpreted by law enforcement officers and courts to include common work tools, including folding and utility knives. The result is that our members are arrested and prosecuted for Criminal Possession of a Weapon in the Fourth Degree for simply carrying work tools on their person.

New York State can right this injustice by passing S6438A/A9042A. This legislation is good for workers and employers alike, as everybody loses when our members miss work while spending a night in jail and face prosecution for simple possession of a necessary tool of the job. We respectfully urge you to pass it this session.

Many thanks for your consideration of my comments on behalf of the membership of Local One.

Sincerely,

James J. Claffey, Jr.
President
Local One, I.A.T.S.E.

June 7, 2016

Via FedEx

Majority Leader John Flanagan
Room 330
State Capitol Building
Albany, NY 12247



Re: Senate Bill 6483 - Definitions of Switchblade Knife and Gravity Knife

Dear Leader Flanagan,

I am writing on behalf of Safari Club International to express our strong support for S6483-A/Savino, the so-called "Gravity Knife Reform Bill." Across New York, law-abiding citizens can walk into their local sporting goods store and buy a standard pocket-sized folding knife and be breaking the law!

Safari Club International is a nonprofit IRC § 501(c)(4) corporation and has approximately 50,000 members and 190 chapters worldwide, including membership and a strong chapter network in New York. This legislation is important to Safari Club International because our members carry these common folding knives every single day for legitimate sporting purposes such as hunting.

A sportsman or woman, who legally purchased a standard pocket-sized folding knife in a rural part of the state, should never have to worry they could face arrest for carrying a simple pocket knife if they enter New York City.

Under the current situation, the New York County District Attorney is using an absurd interpretation of the New York gravity knife statute that defies reason. Officers of the New York City Police Department arrested 70,000 people between 2000 and 2012 for violating the weapons law. Gravity knives accounted for more than two-thirds of those arrests! Even if the majority of these cases never go to trial, getting arrested in itself can be detrimental to a person's life.

S6483-A would simply define what is not a gravity knife or switchblade knife so that the statute can no longer be abused by New York City. It does not make gravity knives or switchblades legal, it simply remedies the injustice being perpetrated by New York City on honest, law-abiding citizens carrying common pocket knives.

For the aforementioned reasons, we respectfully request you bring S6483-A for a vote of the full Senate as soon as possible. If you have any questions or need anything further, please contact Jeff Patchen, Manager of Government Relations, State Affairs at jpatchen@safariclub.org.

Sincerely,

Larry Higgins
President, Safari Club International

Washington DC Office

501 2nd St, NE, Washington DC 20002-4916 • Phone 202.543.8733 • Fax 202.543.1205 • www.scifirstforhunters.org



Majority Leader John Flanagan
Room 330
State Capitol Building
Albany, NY 12247

June 8, 2016

Dear Leader Flanagan,

As the Northeastern States Director for the Congressional Sportsmen's Foundation (CSF), I am writing to express our organization's strong support for S6483-A. Since 1989 the Congressional Sportsmen's Foundation has maintained a singleness of purpose that has guided the organization to become the most respected and trusted sportsmen's organization in the political arena. CSF's mission is to work with Congress, governors, and state legislatures to protect and advance hunting, angling, recreational shooting, and trapping. The unique and collective force of the Congressional Sportsmen's Caucus (CSC), the Governors Sportsmen's Caucus (GSC) and the National Assembly of Sportsmen's Caucuses (NASC), working closely with CSF, and with the support of major hunting, recreational fishing & shooting, and trapping organizations, serves as an unprecedented network of pro-sportsmen elected officials that advance the interests of America's hunters and anglers.

Although I now live and work in Washington, DC, I am a native New York sportsman who grew up hunting deer and turkey on my family's property in Ulster County, and chasing trout on the Esopus Creek. As such, I have a vested interest, not only professionally but personally as well, in ensuring that future generations have the ability enjoy the way of life that was afforded to me in my 30 years as a New York resident.

To that end, both professionally and personally, I wish to impress upon you the importance of passing S6483-A, also called the Gravity Knife Reform Bill. New York's 2.1 million sportsmen and women regularly carry these common folding knives for legitimate sporting purposes such as hunting and fishing, as well as for everyday use. A hunter or angler from a rural area of the state should never have to worry that if they take their family to New York City for a weekend they could face arrest for carrying a simple pocket knife for which they have no fear of arrest in every other part of New York State.


Presently, the New York County District Attorney is using a misguided interpretation of the New York gravity knife statute. According to the *Village Voice*, the result of this interpretation is that

over 60,000 people have been arrested over the last decade for common, everyday pocket knives that are perfectly legal throughout New York State except in New York City.

To correct this situation, S6483-A would provide clarity to the existing law, removing the potential for a subjective interpretation of the statute. To be clear, this legislation does not legalize gravity knives or switchblades, it simply provides a clear definition of which knives are to be classified as switchblades or gravity knives, and which knives are not.

The companion bill (A9042) received overwhelming bipartisan support in the Assembly (117-12), and S6483-A likewise received bipartisan support in the Senate Committee on Codes when the Committee reported it out with unanimous (16-0) approval on March 15, 2016. As the 2016 session now draws to a close, I urge you to bring S6483-A for a vote of the full Senate as soon as possible.

Sincerely,

A handwritten signature in black ink that reads "Brent Miller". The signature is written in a cursive, slightly slanted style.

Brent Miller

Northeastern States Director
Congressional Sportsmen's Foundation
110 North Carolina Ave. SE
Washington, DC 20003

Enclosures: New York Sportsmen's Economic Impact



New York sportsmen & women

2,109,000 hunters & anglers spent \$4.95 billion in 2011

2.11 million people (residents or non-residents) hunted or fished in New York in 2011, almost as much as the combined populations of the Buffalo/Niagara Falls and Rochester Metropolitan Statistical Areas (2.11 million vs. 2.19 million).

There are more resident sportsmen and women in New York than the combined total home attendance for all New York Giants, New York Jets and Buffalo Bills football games (1.98 million vs. 1.71 million combined attendance).

Sportsmen and women spent \$4.95 billion on hunting and fishing in New York in 2011, more than revenues for dairy products, the state's top agricultural commodity (\$4.95 billion vs. \$2.74 billion).

Hunters and anglers support more jobs in New York than the North Shore-LIJ Health System, the state's largest employer (56,014 vs. 37,000).

Spending by sportsmen and women in New York generated \$623 million in state and local taxes in 2011 - that's enough to support the average salaries of about 8,775 teachers.

SPORTSMEN BENEFIT THE STATE ECONOMY

Every single state makes a contribution.
Here are the facts on New York's anglers and hunters.

SEGMENT	PARTICIPANTS	DAYS	SPENDING	JOBS
Total Sportsmen	2,109,000	30.3 million	\$4.95 billion	56,014
Total Anglers	1,882,000	29.9 million	\$2.7 billion	32,317
Total Hunters	823,400	9.2 million	\$2.25 billion	23,697

*Data includes both residents and non-residents age 16 and up, and is a snapshot of participation and spending for 2011.
Total Sportsmen does not equal the sum of Anglers and Hunters as some individuals both hunt and fish.

New York Sportsmen & Women Support

Spending per Day
\$13.6 million

Salaries and Wages
\$2.7 billion

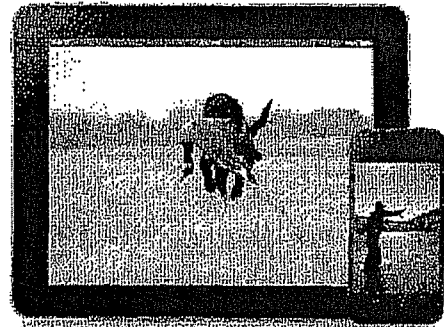
Federal Taxes
\$644 million

State and Local Taxes
\$623 million

Ripple Effect
\$8.12 billion

AN OUTDOOR NATION

Sportsmen and women spent \$90 billion in 2011, that's more than the combined global sales of Apple's iPhone® and iPad® the same year.



NATIONAL STATISTICS

PARTICIPANTS	SPENDING	JOBS	SALARIES / WAGES	TOTAL TAXES
Sportsmen: 37.4 million*	\$90.0 billion**	1.5 million	\$61.7 billion	\$26.7 billion
Anglers: 33.1 million	\$47.7 billion	823,000	\$35.3 billion	\$14.9 billion
Hunters: 13.7 million	\$38.8 billion	681,000	\$26.4 billion	\$11.8 billion

NEW YORK STATISTICS & NATIONAL RANK

2,169,000 #3	\$4.95 billion #2	56,014 #5	\$2.7 billion #2	\$1.3 billion #2
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* Total Sportsmen are participants age 16 and up, does not equal the sum of Anglers and Hunters as some individuals both hunt and fish.

** Total angling and hunting expenditures do not add to Total Sportsmen spending due to expenditures not categorized specifically for either pursuit.



Since 1989 the Congressional Sportsmen's Foundation (CSF) has maintained a singleness of purpose that has guided the organization to become the most respected and trusted sportsmen's organization in the political arena. CSF's mission is to work with Congress, governors, and state legislatures to protect and advance hunting, angling, recreational shooting, and trapping. The unique and collective force of the Congressional Sportsmen's Caucus (CSC), the Governors Sportsmen's Caucus (GSC) and the National Assembly of Sportsmen's Caucuses (NASC), working closely with CSF, and with the support of major hunting, recreational fishing and shooting, and trapping organizations, serves as an unprecedented network of pro-sportsmen legislators that advance the interests of America's hunters and anglers.

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For more information visit www.sportsmenslink.org or call Sara Leonard at 202-543-6850 x11.

Congressional Sportsmen's Foundation 110 North Carolina Avenue, SE Washington, DC 20003

Sources: Hunting In America: An Economic Force for Conservation, National Shooting Sports Foundation; Fishing in America: An Economic Force for Conservation, American Sportfishing Association; 2011 National Survey of Fishing, Hunting and Wildlife Associated Recreation, US Fish & Wildlife Service. Specific sources for state comparisons available on request, 202-543-6850.



Motion Picture Studio Mechanics

Local 52 *International Alliance of Theatrical Stage Employees, AFL-CIO*

19-02 Steinway Street, Astoria, N.Y. 11105
Telephone: (718) 906-9440
Fax No. (718) 777-1820
www.iafselocal52.org
ialocal52@msn.com

July 7, 2016

The Honorable Andrew M Cuomo
Executive Chamber
New York State Capitol
Albany, NY 12224

Dear Governor Cuomo:

As President of Motion Picture Studio Mechanics Local 52 IATSE, I write to ask your support of A.09042A (Quart) / S 6438A (Savino). Thanks to you, my Local Union has over 4,000 members working in motion picture and television production making a good living. Over 90% of them are required to carry knives of various types every day as a tool of the trade. They often use these knives while working at precarious heights and unsteady situations whereby one handed operation is essential to their personal safety. While I understand Commissioner Bratton's concern regarding public safety and knives in general the solution seems clear to me. If a knife is used to commit a crime, the person should be arrested and prosecuted accordingly. If a knife is used to assist a person doing their job during bona fide employment hours they should be left alone. I urge passage of this legislation and I thank you for your support.

Sincerely,

John Ford
President/Business Manager
Local 52 IATSE

JOHN R. FORD
President
Business Manager

JOHN K. FUNDUS
Vice President

RICHARD N. DOLAN
Secretary - Treasurer

RAYMOND FORTUNE
Business Representative

NEW YORK CITY CENTRAL TRADES AND LABOR COUNCIL

NEW YORK STATE FEDERATION OF LABOR

LONG ISLAND FEDERATION OF LABOR



New York Sportsmen's Advisory Council (NYSAC)



June 22, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

The organizational members of NYSAC respectfully request that you sign into Law Bill# A9042A/S6483 - Relates to the definitions of a switchblade knife and a gravity knife; excludes knives which have a mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist or arm to overcome the bias toward closure and opening the knife. We fully support this clarification of definition which will fully meet the intent of the law and reduce or eliminate misinterpretations that have led to unjustified arrests.

The vast majority of those arrested had no criminal intent and believed that the common folding knives they carried were legal. These arrests and prosecutions do not contribute to public safety. Clarifying these definitions will prevent these arrests.

This request is being made by NYSAC on behalf of the thousands of sportsmen and women our member organizations represent. The following is a comprehensive list of our member organizations that support passing these bills:

- Duck's Unlimited, Inc
- National Wild Turkey Federation
- New York State Conservation Council, Inc.
- NYS Conservation Fund Advisory Board
- New York Crossbow Coalition
- New York Deer & Elk Farmers Association
- New York Houndsmen Conservation Association
- New York Trappers Association
- Quality Deer Management Association
- Safari Club International W&C NY Chapter
- SCOPE Inc.

As you see we represent a large majority of New York State Sportsmen, Sportswomen and Conservationists that support this bill being signed into law. I will be happy to address any questions or concerns you may have.

Thank you in advance for your action regarding this matter!

Respectfully Submitted,

Larry G. Becker

Larry G. Becker
Vice Chairman, New York Sportsmen's Advisory Council
5201 Murphy Rd., Gainesville, NY 14066-9766
Home Phone: (585) 493-3057 Mobile Phone: (585) 739-1711
Email: lgbecker@reagan.com
Cc: Assemblyman Quart, Senator Savino



October 25, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

**JustLeadershipUSA Letter of Support
So6483-A / A09042A
“Gravity Knife & Switchblade Reform Law”**

Dear Governor Cuomo,

On behalf of JustLeadershipUSA, I write to respectfully urge you to sign the “Gravity Knife and Switchblade Reform” bill, So6483-A (Savino)/ A09042A (Quart). JustLeadershipUSA is committed to cutting the U.S. correctional population in half by 2030 while increasing public safety. Through passage of So6483-A / A09042A, New York can maintain public safety and uphold the initial intent of New York’s “Gravity Knife” law, while reducing unnecessary arrests.

Every year, thousands of New Yorkers are **needlessly charged and processed through our criminal justice system for carrying knives that are broadly available for purchase**, and frequently used for professional purposes. This is the direct result of the existing, antiquated, “Gravity Knife Law.”

In 1958, state legislators banned knives with blades that fall out of the handle when the user point it at the ground and push a lever—a so called “gravity knife”. Modern knives, for example, pocketknives, bear little resemblance to the knives that were the original subjects of the ban. Many people, including carpenters, construction workers and stagehands, have no idea that their knives can be made to open with a flick of the wrist. Most don’t know that simply possessing such a knife breaks the law. While most “gravity knife” cases don’t go to trial, the arrest itself, and the following entanglement with the justice system, can have a seriously destabilizing effect on a person’s life—particularly for low-income individuals, or individuals with prior convictions.

So6483-A (Sen. Savino)/ A09042A (Assm. Quart) updates the definitions of a switchblade and a gravity knife to exclude knives which have a spring, detent or other mechanism designed to create a bias toward closure, and that requires exertion applied to the blade in order to open the knife. If signed into law, this legislation will exempt from the ban the sorts of knives that are widely available for sale and that the average person would need both hands to open. This would help to reduce the number of unwarranted arrests (and resulting involvement with the criminal justice system) without endangering public safety.

As Governor, you have shown commitment to criminal justice reform and reducing the prison population. In the broader context of mass incarceration, passage of **So6483-A / A09042A** will serve to decrease the number people who become involved with the criminal justice system,

t. 347.454.2195
w. justleadershipusa.org
@JustLeadersUSA

a. JustLeadershipUSA
1900 Lexington Avenue
New York, NY 10035

and move us closer toward ending mass incarceration. I hope that you will strengthen your legacy as a criminal justice reform advocate and **sign So6483-A / A09042A into law.**



Sincerely,

A handwritten signature in black ink, appearing to read "Glenn E. Martin", is written over a horizontal line.

Glenn E. Martin
Founder and President, JustLeadershipUSA

JustLeadershipUSA supports So6483-A (Savino)/ A09042A (Quartz); and urges Governor Cuomo to sign it into law

t. 347.454.2195
w. justleadershipusa.org
@JustLeadersUSA

a. JustLeadershipUSA
1900 Lexington Avenue
New York, NY 10035

12/21/2016 11:45

(FAX)

P.001/001



Marlo F. Cileto
President

Terrence L. Melvin
Secretary-Treasurer

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New York, NY 10004
(212) 777-6040
Fax - (212) 777-6422

100 South Swan Street
Albany, NY 12210
(518) 438-8516
Fax - (518) 438-8470

December 21, 2016

Honorable Andrew Cuomo
Governor of the State of New York
State Capitol
Albany, New York 12224

ATT: Alphonso David, Counsel

RE: A. 9042A

Dear Governor Cuomo:

The New York State AFL-CIO, representing over 2.5 million union members, their families as well as our retirees and their families supports the above referenced legislation.

This bill amends the Penal Law to narrow the definition of "switchblade" by excluding gravity knives, which are spring loaded knives used in the workplace for a variety of functions. This will eliminate the potential for arrest and prosecution of workers who have a gravity knife on their person after leaving work.

Gravity knives are used by a variety of building and construction trades, manufacturing, retail and wholesale and countless other industries. They are a necessary tool at many worksites and often are part of a worker's or employer's tool set.

Unlike switchblades, gravity knives are not designed as a weapon and are intended solely for the use as a cutting tool in the workplace. No worker should be arrested for simply carrying a tool that is required and necessary as a part of their daily routine. There are already other laws in place that can be more appropriately applied if someone misuses a gravity knife, or for that matter any other item, as a weapon.

Therefore, on behalf of the New York State AFL-CIO, I respectfully urge this bill be signed into law.

Sincerely,

Marlo Cileto
President



**NEW YORK STATE BLACK, PUERTO RICAN,
HISPANIC, AND ASIAN LEGISLATIVE CAUCUS**

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Kyle H. Ishmael, Esq.

November 7, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: Support for S.6483A/A.9042A

Dear Governor Cuomo:

As Chairman of the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus, I am writing in support of S.6483A/A.9042A, a bill that amends Penal Law § 265.00 to make clear that common folding knives are not per se weapons and may not be prosecuted as gravity knives under the law. We urge you to sign this bill into law and bring an end to one of New York State's most discriminatory criminal justice practices.

Every year, retailers throughout New York State such as Walmart, Lowes, Ace Hardware, AutoZone, Dicks Sporting Goods, and Sports Authority sell thousands of folding knives that are designed, marketed and used as tools, not weapons. Most New York State prosecutors treat folding knives just as they are designed, as tools. But in New York City, police and prosecutors use P.L. 265.00 to categorize the very same folding knives as per se weapons.

NYPD does not arrest retailers who possess and sell folding knives, but has arrested tens of thousands of New Yorkers who purchase them. According to NYPD stop and frisk data analyzed by the Village Voice, 86% of those arrested under the gravity knife statute are Black or Latino.

New York City prosecutors have taken no meaningful action to mitigate such discriminatory enforcement. In 2010, the New York County District Attorney's Office went so far as to affirmatively authorize Paragon Sports to sell custom-made, high-end knives that violated the gravity knife statute on the unfounded rationale that expensive knives were less likely to harm people than their cheaper version.

Such discriminatory enforcement is an affront to the legitimacy of criminal law. It creates the impression that law enforcement agencies exploit the gravity knife statute to control and punish indigent, urban communities of color while leaving retailers, upstate New Yorkers, white residents of New York City, and affluent possessors of expensive knives unscathed.

The number of people ensnared by NYPD's practice is astounding. According to arrest data from 2000 until 2012, NYPD made 69,999 arrests for violations of P.L. 265.01(1). According to a 6-month sample of criminal complaints reviewed by the Legal Aid Society, 69% of arrests for violations of P.L. § 265.01(1) were for alleged gravity knife

possession. Notably, of that sample, less than 2% involved allegations that defendants possessed the alleged gravity knife with intent to use unlawfully against another.

NYC prosecutors charge most gravity knife arrests as misdemeanors. Defendants suffer the many harms that attend any misdemeanor prosecution: the humiliation of arrest and detention, lengthy court delays, missed work, childcare costs, employment suspensions, burdensome fines, community service obligations, criminal convictions, and in some cases, jail time. In some cases, prosecutors act even more aggressively, exploiting P.L. 265.02(1) to charge defendants with felonies. That provision permits prosecutors—but does not require them—to charge gravity knife possession as a felony where a defendant has previously been convicted of any crime, no matter how serious the prior crime nor how long ago it was committed.

Even within NYC, use of the gravity knife felony enhancement provision varies dramatically. According to a six month sample of felony gravity knife prosecutions gathered by the Legal Aid Society, the Bronx DA charged 4 indigent defendants with felony gravity knife possession, the Queens DA charged 5, the Brooklyn DA charged 5, the Staten Island DA charged 0 and the New York County District Attorney's Office charged 65 during that same 6-month period, four times more than all other prosecutors in NYC combined.

Such disparate, overzealous enforcement wholly undermines re-entry efforts. For the formerly incarcerated who work physically demanding, low-paying jobs in efforts to reintegrate into society, such practices are cruel, arbitrary barriers to re-entry, masquerading as criminal justice.

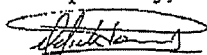
Defendants like Richard Neal, Antoine Best, Jesus Rodriguez, Elliot Parrilla and Richard Gonzalez have all borne the brunt of such arbitrary enforcement. All possessed folding knives that were sold by major retailers. Neal was sentenced to 3-6 years for a knife sold at Lowes. Best and Rodriguez were sentence to 2.5 to 5 years and 2 to 4 years respectively for a knives sold on Amazon.com. Parrilla and Gonzalez were sentenced to 2.5 to 5 years and 3.5 to 7 years respectively for knives that sold at Home Depot. None were arrested under circumstances demonstrating an intent to use their knives unlawfully, much less unlawfully against any person. And all were people of color.

It is important to note that the Legislature never intended to classify folding knives as gravity knives. In 1958, when the Legislature passed the original ban, it outlawed an unmistakable German WWII-era weapon that opened effortlessly by force of gravity and was used by youth gangs, not common folding knives designed as tools. Additionally, the folding knives that thousands of New Yorkers are arrested for every year are no more dangerous than kitchen knives and other widely available work items. According to a six month sample of misdemeanor gravity knife prosecutions tracked by the Legal Aid Society, less than two percent of gravity knife cases involved allegations that a defendant intended to use his knife unlawfully.

Not surprisingly, the New York State Legislature passed S.6483A by overwhelming margins (Assembly 117-12, Senate 61-0). The legislation mirrors federal law and clarifies the gravity knife statute so that common folding knives that have a "bias toward closure" are no longer treated as per se weapons. Most critically, the legislation will bring an end to years of discriminatory enforcement.

As Governor, you have shown tremendous vision in your calls for criminal justice reform. We applaud your efforts to create community schools, an urban youth jobs programs, expanded alternatives to incarceration, educational programs in prisons, meaningful support for recently released inmates and restricted access to criminal justice records. We urge you to build on your legacy as a progressive reformer, committed to racial justice and equality under the law. We therefore urge you to sign S.6483A/A.9402A into law.

Respectfully,



N. Nick Perry
Chairman

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo,

I am writing in support of A9042A/S6483A, a bill that amends Penal Law § 265.00 to make clear that common folding knives are not per se weapons and may not be prosecuted as gravity knives under the law. On behalf of the Katal Center for Health, Equity, and Justice, I respectfully urge you to sign this bill into law and bring an end to one of New York State's most discriminatory criminal justice practices.

Katal is committed to ending mass criminalization, mass incarceration, and the war on drugs. We seek to promote health, justice, equity, and community safety.

NYPD's discriminatory gravity knife enforcement regime is the very type of criminal justice practice that we believe that must come to an end.

For years retailers throughout the state—including Walmart, Lowes, Ace Hardware, AutoZone, Sports Authority, Dicks Sporting Goods and Paragon Sports—have sold thousands of folding knives that are designed, marketed and used as tools, not weapons. Most New York State prosecutors treat folding knives just as they are designed, as tools. But in New York City, police and prosecutors torture P.L. 265.00 to categorize the very same folding knives as per se weapons. NYPD does not arrest retailers who possess and sell folding knives, but has arrested tens of thousands of New Yorkers who purchase them.

Tragically, according to NYPD data analyzed by the Village Voice, 86% of those arrested under the gravity knife statute are Black or Latino.

The effect of NYPD's enforcement regime is that folding knives are treated as tools when marketed on the shelves of major retailers, but as illegal weapons when in the hands of thousands of black and Latino New Yorkers.

The number of people ensnared by NYPD's discriminatory practice is astounding. According to arrest data from 2000 until 2012, NYPD made 69,999 arrests for violations of P.L. 265.01(1). According to the Legal Aid Society, approximately

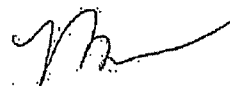
69% of those arrested under that provision are charged with alleged gravity knife possession, making it one of NYPD's highest arrest categories.

New York City prosecutors have done nothing to mitigate NYPD's practice. In far too many cases, prosecutors exploit penal law 265.02(1) to charge Black and Latino New Yorkers with felony possession of gravity knives, even in cases where those New Yorkers purchased their knives at major retailers and used them for work. *People v. Neal*, 79 A.D.3d 523, (1st Dept. 2010); *People v. Best*, 57 A.D.3d 279 (1st Dept. 2008); *People v. Parrilla*, 27 N.Y.3d 400 (2016); *People v. Gonzalez*, 25 N.Y.3d 1100 (2015); *People v. Rodriguez*, 135 A.D.3d 587 (1st Dept. 2016).

The New York State Legislature resoundingly rejected NYPD's gravity knife enforcement regime when it passed A9042A/S6483A (Assembly 117-12, Senate 61-0). The legislation mirrors federal law and clarifies the gravity knife statute so that common folding knives that have a "bias toward closure" are no longer treated as per se weapons. Most importantly, if signed, the legislation will bring an end to one of New York State's most discriminatory criminal justice practices.

As Governor, you have shown great vision in your calls for criminal justice reform. At Katal, we applaud your efforts to create community schools, an urban youth jobs programs, expanded alternatives to incarceration, educational programs in prisons, meaningful support for recently released inmates and restricted access to criminal justice records. We respectfully urge you to build on your legacy and sign A9042A/S6483A into law.

Sincerely,



Melody Lee
Co-Founder and
Director of Strategy and Campaigns
Katal Center for Health, Equity,
and Justice



Yale Law School

December 4, 2016

Dear Governor Cuomo,

We are criminal law professors at Yale Law School and we write to respectfully urge you to sign S.6483A/A9042A. The bill would make clear that common folding knives, which are sold throughout New York City and State, and are used daily by law abiding citizens as work tools, are unjustly treated as illegal "gravity knives."

S.6483A/A9042A will stop N.Y. Penal § 265.00 from continuing to be applied in a way that is manifestly incompatible with the aims of those who wrote it. The original gravity knife was a World War II era German knife that effortlessly dislodged the blade from the handle with mere inversion. It was unmistakably a weapon. When, in 1958, the legislature prohibited the gravity knife under N.Y. Penal § 265.01(1), it was one of a long list of items all of which were unambiguously weapons with no other legitimate purpose: pilum ballistic knives, metal knuckle knives, cane swords, billies, blackjacks, bludgeons, plastic knuckles, metal knuckles and "Kung Fu stars." (See N.Y. Penal § 265.01 (1)).

Common folding knives have blades that are held in the closed position by a spring, detent ball, or other mechanism that exerts tension on the blade. The blade is designed to, and will in fact, remain in the closed position until the blade is actually manipulated by the hand to overcome the closing tension and move to the open position. This is what is called a "bias towards closure." Knives with a bias towards closure are not gravity knives because they cannot be opened with mere gravity. Unfortunately, courts have failed to recognize this basic distinction and have held common folding knives with a bias towards closure to be gravity knives, thereby transforming possession of a common work tool into a *per se* weapon subject to strict liability crime with an authorized sentence of up to one year in jail and up to seven years in prison if the arrestee has any criminal conviction whatsoever. N.Y. Penal § 265.01 (1); 265.02 (1).

Under the current practice of the New York City Police Department (NYPD) and the District Attorney of New York County office (DANY), common folding knives with a bias towards closure are treated as gravity knives, and mere possession of them is prosecuted under N.Y. Penal § 265.01 (1) or 265.02 (1). But such knives are not visibly weapons and they are primarily used, and intended to be used, for legitimate work purposes. The result is that N.Y. Penal § 265.00(5) is applied in a way that is in direct conflict with the aims of the enacting Legislature, which sought to target possession of obvious, unmistakable weapons. S.6483A/A9042A will remedy the problem.

In addition, § 265.00(5), as applied in New York City, is egregiously vague. Neither the NYPD nor DANY has a consistent test for determining whether a given folding knife is an illegal gravity knife. A knife will be classified as a gravity knife if the arresting

officer is able to open it with a flick of the wrist. Sometimes officers will attempt to flick the knife open once without partially opening the knife as a "primer"; sometimes officers will partially overcome the bias towards closure then flick it open; sometimes officers will flick it forcefully multiple times in a row before successfully opening the knife. Some DAs take a knife to be a gravity knife only if it can be flicked open in a single forceful try; some if it can be opened some percentage of times over multiple tries. The strength and dexterity of people who apply the functional wrist flick test varies greatly, and therefore so will the ability of any person to force open a folding knife with a bias towards closure with a wrist flick. Furthermore, as knives age the spring mechanism can loosen over time and therefore a common folding knife could be legal one day and the next day be treated as a gravity knife. Note, this was not true of the gravity knife prohibited originally, which opened the same way every time for every person—the blade would fall from the handle with mere inversion and no additional force.

The Supreme Court has said, "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926); accord *Farrell v. Burke*, 449 F.3d 470, 485 (2d Cir. 2006). Criminal laws, that is, must meet a high standard of specificity since people who violate them can lose their freedom and face other attendant collateral consequences of criminal conviction. The way that § 265.01 (1) is being applied very well may be in violation of this stricture. There is no definitive source that a person purchasing common folding knives can go to figure out if a lawfully purchased knife will, at some point, be treated as an illegal gravity knife because the test is inherently indeterminate when applied to knives with a bias toward closure.

Furthermore, § 265.00(5) is applied in a way that is not only vague, but discriminatory. According to NYPD arrest data, 69,999 people were arrested for misdemeanor weapons charges from 2000-2012. Based on a 6-month sample of Legal Aid clients, 69% of those arrested were arrested for gravity knife possession. According to the Village Voice, 86% of those arrested for gravity knife possession are Black or Latino. It is our understanding that there is nowhere outside of New York City that this state law is interpreted to apply to common folding knives by local law enforcement.

In addition, § 265.00(5) has, unfortunately, been interpreted by New York Courts to lack a *mens rea* requirement. *People v. Parrilla*, 2016 NY Slip Op 03417 (2016). This means that a person with a folding knife can be guilty under §§ 265.01(1) or 265.02(1) even if he did not know, and could not know, that the knife he possesses could—by someone with some amount of force at some point—be opened with the flick of a wrist. The New York rule is radically at odds with the common law tradition: "the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo American criminal jurisprudence." *United States v. Gypsum*, 438 U.S. 422, 436 (1978). By contrast, the Supreme Court held that a federal statute requiring registration of a machine gun included a *mens rea* requirement: the defendant could not be held guilty unless he actually knew of the alteration in the weapon that turned it from a semi-automatic to an automatic gun. *Staples v. U.S.*, 511 U.S. 600 (1994). New York's departure from common law

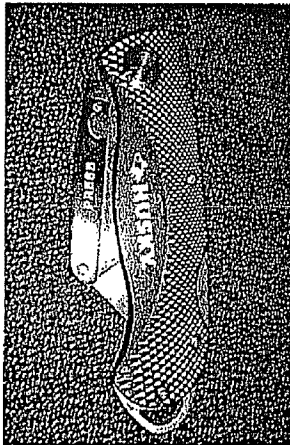
principles, affirmed by the Supreme Court of the United States, is an affront to the legitimacy of criminal law.

Interpreting Penal Law §§ 265.01(1) and 265.02(1) to impose strict liability is especially absurd given that knives that are treated as illegal gravity knives are sold openly and widely all over New York State and New York City. Citizens are given no notice of the potential criminal liability they can incur for possessing them. People presume, with good reason, that items sold in the tools section of major hardware stores—such as Lowes, Ace Hardware, AutoZone, Benjamin Moore Paint, Dicks Sporting Goods, Paragon Sports and countless others—are legal to possess. Yet, Elliot Parrilla was sentenced to 2.5 to 5 years in state prison for mere possession of a utility knife that is widely sold across New York City.¹

Elliott Parrilla Utility Knife
2.5 to 5 years, state prison

Ace Hardware
430 Court St, Brooklyn NY

Lowes Home Improvement
635 Ave. of the Americas



We submit that it is unacceptable that thousands of New Yorkers, overwhelming New Yorkers of color, are arrested and prosecuted for possessing items that NYPD treats as tools when sold on store shelves, but as weapons once in black and brown hands.

Prosecutions under §§ 265.01(1) and 265.02(1) systematically disregard foundational principles that shield individuals from the arbitrary power of the state: specificity, non-discriminatory enforcement, *mens rea*, and notice. Thousands of ordinary New Yorkers who have no reason to believe that they have committed any crime are ensnared. S.6483A/A9042A will remedy this deeply troubling injustice. We urge you to sign it.

¹ As of December 1, 2016 the pictured utility knives continue to be offered for sale at, among many other places, Ace Hardware in Brooklyn and Lowes Home Improvement in Manhattan.

Sincerely,

s/ISSA KOHLER-HAUSMANN

Issa Kohler-Hausmann
Associate Professor of Law

s/TOM R. TYLER

Tom R. Tyler
Macklin Fleming Professor of Law and
Professor of Psychology

s/TRACEY L. MEARS

Tracey L. Mears
Walton Hale Hamilton Professor of Law

s/JAMES Q. WHITMAN

James Q. Whitman
Ford Foundation Professor of
Comparative and Foreign Law

s/KATE STITH

Kate Stith
Lafayette S. Foster Professor of Law

s/GIDEON YAFFE

Gideon Yaffe
Professor of Law, Professor of
Philosophy, and Professor of Psychology

* This has been prepared by someone affiliated with Yale Law School, but does not purport to present the school's institutional views, if any.

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September 19, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: New York State Assembly Gravity Knife and Switchblade
Reform Bill S.6483A/A.9042A

Dear Governor Cuomo:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to respectfully urge you to sign New York State Assembly Gravity Knife and Switchblade Reform Bill S.6483A/A.9042A, which would decriminalize certain folding knives and allow New Yorkers who utilize these tools for employment purposes to do so without fear of arrest and prosecution. LDF is the country's first and foremost civil and human rights law firm. Founded in 1940 under the leadership of Thurgood Marshall, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color. It has used litigation and policy advocacy to eliminate racial bias at every stage of the criminal justice system – from police stops,¹ to jury selection,² to sentencing.³

Members of the New York State Assembly overwhelmingly passed S.6483A/A.9042A to clarify the intent of a criminal law that has been applied in an allegedly discriminatory manner. Under the current law, a law-abiding New Yorker can walk into a hardware store, buy a common folding knife, and be rewarded with a criminal conviction—merely for possessing a tool that is available for purchase throughout the city and state. This law is problematic on its face and even more

¹ See, e.g., Complaint, *Davis, et al. v. City of New York, et al.*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y. Jan. 28 2010) (alleging that the New York City Police Department's policy and practice of pedestrian stops and arrests at public housing developments were carried out in a racially discriminatory manner and without evidence of wrongdoing), <http://www.naacpldf.org/update/court-approves-final-settlement-federal-class-action-lawsuit-challenging-police-practices-nyc>. See also, *Tolan v. Cotton*, No. 13-5551 Motion for Leave to File U.S. Supreme Court Amicus Brief (alleging excessive use of force by the Bellaire, Texas Police Department) <http://www.naacpldf.org/case-issue/tolan-v-cotton>.

² See, e.g., *Rosales v. Quartermaster*, <http://www.naacpldf.org/case-issue/rosales-v-quartermaster>.

³ See, e.g., Case of Duane Bucks, <http://www.naacpldf.org/case-issue/duane-buck-sentenced-death-because-he-black>. See also, *United States v. Blewett*, <http://www.naacpldf.org/case-issue/united-states-v-blewett>

problematic in its application. It punishes New Yorkers for an innocent act, and it is overwhelmingly applied against African Americans and Latinos. We urge you to address this problem by signing S.6483A/A.9042A, a bill that amends Penal Law § 265.00 by making clear that the simple possession of a common folding knife is not a criminal act.

New York State Penal Law § 265.00 criminalizes the possession of “any knife which has a blade which is released from the handle or sheath by force of gravity or the application of centrifugal force. . . .” The law initially targeted a class of large, dangerous knives that were designed to open effortlessly with the aid of gravity. But the federal government soon banned these knives, and they disappeared from the market.⁴

As true “gravity knives” disappeared, prosecutors in most of New York State stopped prosecuting people under the gravity knife statute. According to a spokesperson for the District Attorneys Association of the State of New York, most district attorneys in the state “have not prosecuted a gravity-knife case, or haven’t prosecuted one in 30 years.”⁵ Outside New York City’s limits, gravity knife prosecutions are approaching extinction; inside the city is an entirely different matter.

Prosecutors in New York City have taken advantage of a loophole in the law. New York courts ruled that the gravity knife law applied to any knife that could be opened by flicking one’s wrist. True gravity knives were designed to open with a flick of the wrist. But common folding knives, which are not designed to open with a wrist flick, can generally be opened that way if enough force is applied in just the right manner. As a result, prosecutors can charge and convict a person of carrying a gravity knife even if the knife was not designed to open with a wrist flick, and the owner did not know it could be opened that way.

These prosecutions are surprisingly widespread. The Village Voice estimated that as many as 60,000 people were prosecuted under the gravity knife statute between 2004 and 2014. If those estimates are correct, “possession of a gravity knife” is one of the 10 most commonly prosecuted offenses in New York. When the Village Voice reviewed a number of these convictions, they found that few involved violence and most involved the nonviolent possession of a knife that the person used for work. In other words, possessing a knife that one uses for work is one of the most common ways to be convicted of a crime in New York.

⁴ Jon Campbell, *How a ‘50’s Era New York Knife Law Has Landed Thousands in Jail*, The Village Voice, Oct. 7, 2014.

⁵ See *id.*

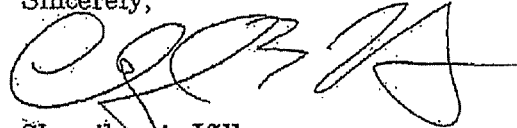
Of further concern, these prosecutions are disproportionately imposed upon communities of color: African Americans and Latinos are far more likely than whites to be convicted of possessing a gravity knife. Many gravity knife arrests result from stop and frisk encounters with the police. Within this pool, 86% of those arrested were Black or Latino. Only 11% were white. When the police stopped a white suspect with a knife, he had a 35% chance of being arrested. If the suspect is Black or Latino, that number jumps to 56%.

S.6483A/A.9042A would fix these problems by limiting Penal Law § 265.00 to true gravity knives and making clear that the possession of a common folding knife for personal or professional use is not a crime. If the law were enacted, maintenance workers, plumbers, and electricians could carry the tools required for their jobs without fear of arrest, and police officers would no longer be responsible for determining whether a knife can be opened by an expert flick of the wrist. Individuals who carry switchblades or other knives designed to function in a manner prohibited by the statute could still be charged under other sections, as could anyone who uses common folding knives for violent purposes. New York City would advance public safety and its citizens would avoid unnecessary, racially discriminatory arrests and convictions.

As Governor, you have shown laudable vision in your calls for criminal justice reform. We applaud your efforts to create community schools, urban youth jobs programs, alternatives to incarceration, educational programs in prisons, meaningful support for recently released inmates, and restricted access to criminal justice records. We urge you to build on your legacy as a reformer by signing S.6483A/A.9042A into law.

If you have any questions or concerns, please do not hesitate to contact Christopher Kemmitt at 202-682-1300 or me at 212-965-2200.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sherrilyn A. Ifill', with a stylized flourish at the end.

Sherrilyn A. Ifill
Director-Counsel and President

Christopher Kemmitt
Senior Counsel



NYCLU

NEW YORK CIVIL LIBERTIES UNION

Legislative Office
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Albany, New York 12217
518-436-8598
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October 11, 2016

Governor Andrew M. Cuomo
The Executive Chamber
State Capitol
Albany, New York 12224

Re: Approval recommendation regarding A.9082-A/S.6483-A, legislation that would clarify the definition of a switchblade knife and a gravity knife

Dear Governor Cuomo:

The legislature has passed a bill, with overwhelming bipartisan support, that seeks to address the unwarranted criminal prosecution of persons who have in their possession a common utility knife, and who pose no danger to public safety. The legislation – A 9082-A/S.6483-A, will soon be delivered to your desk; we urge that you sign it into law.

The problem the legislation seeks to address has its origin in state penal law provisions that include outdated definitions of “gravity knife” and “switchblade knife.” These definitions are both technically inaccurate and legally imprecise. In 1958 the New York State Legislature adopted the definition of gravity knife as having a blade that is released from the knife handle by gravity or centrifugal force, and then locks into place.¹ The penal code defines a switchblade as a knife with a blade that opens automatically with hand pressure applied to a button or other device.² Along with switchblades, the gravity knives developed for use by German paratroopers in World War II were considered to be particularly dangerous weapons because they were designed to open, and to remain open, with little effort.

However, virtually all pocket knives and utility knives in use today are designed and manufactured to operate with a bias toward closure. This design element is a safety feature. And yet every year thousands of individuals – including construction laborers, electricians, warehouse managers, handymen – are charged with misdemeanors, simply for carrying in their pockets a utility knife or work knife.

Notwithstanding the “closure bias” that is incorporated in the mechanical operation of pocket knives, police officers have reportedly become adept at overriding this safety feature. Using a

¹ N.Y. Penal Law § 265.00(5) (“Gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.”).

² N.Y. Penal Law § 265.00(4) (“Switchblade knife” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.”).

practiced technique that involves an aggressive flick of the wrist, police officers learn to release the blade of any common pocket knife. And with this maneuver, they conduct arrests for possession of gravity knives or switchblades, in contravention of the clear meaning of the law, and the intent of the legislature in enacting it.

What's more, violation of these provisions in the law are enforced as strict liability offenses.³ That is, criminal culpability arises from the mere possession of what police and prosecutors erroneously deem to be a gravity knife or switchblade. In other words, New Yorkers can be arrested for carrying a common utility knife, even though they have no intention of doing anything unlawful with it.

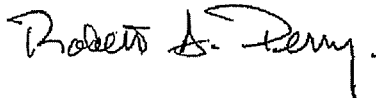
Tens of thousands of New Yorkers have been charged with carrying gravity and switchblade knives since 2000, although the knives the law was actually meant to ban are today rare antiques.⁴ Nevertheless, the penal code provisions prohibiting possession of gravity knives and switchblades are aggressively enforced, in manner that is starkly discriminatory. Knife possession charges are disproportionately brought against people of color, and stops in which a knife is found are far more likely to result in arrest for people of color than for white New Yorkers.⁵

The legal consequences can be grave. The law permits prosecutors to charge possession of a gravity knife or switchblade as a felony if the defendant has a prior criminal conviction. And because these offenses are prosecuted as strict liability crimes, any person with a criminal record who owns a folding knife is, for all intents and purposes, a Class D felon waiting to be stopped.

This bill would amend the legal definitions of gravity knives and switchblades, excluding from these definitions knives whose mechanism creates pressure against releasing the knife blade, and a bias toward closure once the knife is opened. These amendments will restore the meaning of the law as intended, and will prevent the unwarranted arrest and prosecution of persons carrying common utility knives and work knives

The New York Civil Liberties Union joins the New York State Office of Court Administration, law enforcement officials, public defenders, and civil rights advocates in calling on you to approve A.9082-A/S.6483-A.

Sincerely,



Robert Perry
Legislative Director



Erika Lorshbough
Legislative Counsel

³ See N.Y. Penal Law § 265.01(1) and § 265.02(1).

⁴ Jon Campbell, *How a '50's Era New York Knife Law Has Landed Thousands In Jail*, Village Voice (October 7, 2014), available at <http://www.villagevoice.com/news/how-a-50s-era-new-york-knife-law-has-landed-thousands-in-jail-6662589>; Ed. Board, *New York's Outdated Knife Law*, N.Y. Times (May 31, 2016), available at <http://www.nytimes.com/2016/05/31/opinion/new-yorks-outdated-knife-law.html>.

⁵ Campbell, *supra*.



December 14, 2016

Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Support for S.6483A/A.9042A

Dear Governor Cuomo:

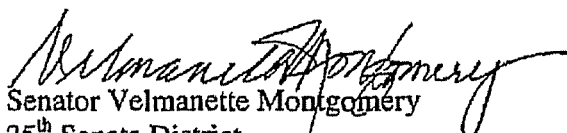
We the undersigned legislators, including sponsors, urge you to sign S.6483A/A9042A. This bill would amend Penal Law 265.00 by clarifying that the simple possession of a common folding knife, for professional or personal use is not a crime under the gravity knife statute.

People possessing these folding knives are often arrested for gravity knife possession. Those arrested are often construction laborers, electricians and other law-abiding workers, who purchase folding knives as professional tools from commonly frequented retail outlets such as Lowes, AutoZone, Dicks Sporting Goods, Ace Hardware, and countless other stores throughout New York City and New York State.

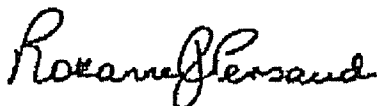
Arresting and criminalizing law-abiding citizens for possessing a tool used for professional purposes was not the intent of gravity knife law; which is now routinely applied in a way that is not only vague but also discriminatory. According to NYPD arrest data, 69,999 people were arrested on misdemeanor charges from 2000-2012. Based on a six-month sample of Legal Aid clients, 69% of those arrested were done so on the basis of gravity knife possession and according to the *Village Voice*, 86% of those arrested for gravity knife possession were Black and Latino.

The enactment of S.6483A/A9042A would create parity with federal law and protect an important segment of the labor workforce who rely on this important tool for their economic livelihood. We look forward to your affirmative action.

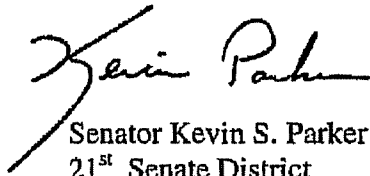
Sincerely,


Senator Velmanette Montgomery
25th Senate District

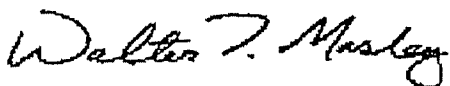
Re: Support for S.6483A/A.9042A
Page 2



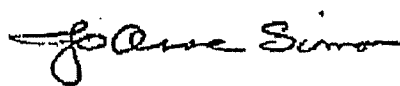
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19th Senate District



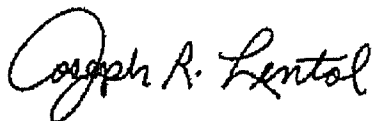
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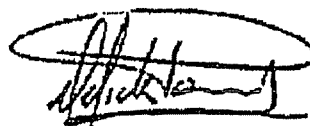
Assembly Member Walter T. Mosley
57th Assembly District



Assembly Member Jo Anne Simon
52nd Assembly District



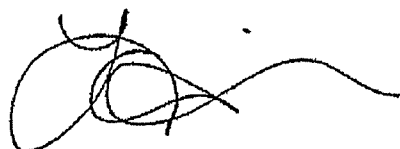
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50th Assembly District



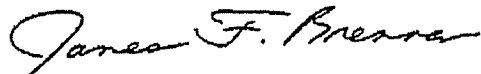
Assembly Member N. Nick Perry
58th Assembly District



Assembly Member Richard Gottfried
75th Assembly District



Assembly Member Latrice Walker
55th Assembly District



Assembly Member James F. Brennan
44th Assembly District



**BROOKLYN
DEFENDER
SERVICES**

June 23, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Re: Support for S6483 (Savino) / A9042 (Quart)

Dear Governor Cuomo:

As the Executive Director of Brooklyn Defender Services ("BDS"), I write to respectfully urge you to sign S6483 (Savino)/A9042 (Quart) into law. This bill simply clarifies the definitions of switchblade knives and gravity knives to exclude ordinary folding knives that are commonly sold on-line and in hardware stores to workmen and artisans, and which only specially trained law enforcement officers are able, often only after several tries, to flick open by exertion.

BDS is a comprehensive indigent legal service organization that provides multi-disciplinary, and client-centered criminal defense, family defense, immigration and civil legal services, and social work support to more than 40,000 indigent Brooklyn residents every year.

EXISTING LAW

Currently, possession of a switchblade or a gravity knife is prohibited under Penal Law § 265.01 (1), which makes possession of such knives a "strict liability" crime. In other words, simple possession of these knives, even without any criminal intent, is a crime. Possession in the Penal Law is not limited to one's person; it encompasses possession in one's car, closet and even toolbox. Under current case law, a person may be guilty of a misdemeanor for possessing a commonly-sold folding knife, even if that knife is not meant to be opened by the force of gravity, and even though the possessor is unaware that the knife could be opened in that manner.

PROPOSED AMENDMENT

This legislation would narrow the definition of switchblades and gravity knives to clarify that they "do not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife." This definition excludes ordinary folding

Lisa Schreifersdorf
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knives which are not meant to be opened in the manners typical of switchblades or gravity knives. It would conform the law to match people's very reasonable expectations about carrying tools and also to send a message that the residents of this state deserve to go about their law-abiding lives in peace. **It is important to remember that, under this legislation, any and all assaults, robberies or other crimes in which knives are used would remain felony offenses and punishable with years in prison.**

JUSTIFICATION

The need for this legislation is clear. Tens of thousands of New Yorkers have been prosecuted for being in possession of—either on their person, or somewhere in their car or home—an instrument they use peacefully in the workplace, simply because it meets the technical legal definition of a “gravity knife.” BDS represents thousands of clients every year who are charged with the relevant offense, Criminal Possession of a Weapon on the Fourth Degree (CPW4), including stagehands, carpenters, and movers in uniform who are caught with box cutters. **As always, it is critical to remember that those who are arrested for any reason face not only a prospective sentence handed down by a judge, but also many other consequences that impact individuals, families and, indeed, entire communities, including job loss, deportation, curtailed access to education and more.** ‘Criminal Possession of a Weapon in the Fourth Degree’ does not look good on a job or college application.

On June 3, 2016, WNYC's the Brian Lehrer Show included a segment on gravity knives. Each and every one of the callers had a personal story of being negatively impacted by our state's outdated gravity knife law. When closing the segment, Mr. Lehrer noted his phones were ringing non-stop, and that he could continue taking calls from people with similar stories all day. Norman of Huntington, Long Island, called in with the following story:

“My son had a similar experience to your prior caller. We live in Huntington in Suffolk County. He works for a kayak company – Glacier Bay Sports – where he did lessons, demonstrations for rescue, untying boats, cutting boats free, etc. He was visiting some friends at NYU. At 12 o'clock at night, he gets stopped by a cop in a squad car. They see the clip that holds [the folding knife] in his rear pocket. They ask to see it. He says sure. He shows it to them. They don't even test it. They just handcuff him and throw him in the squad car and two days later he's out of jail. After \$4,000 in legal fees and a letter from his employer indicating that it was mandatory for him to carry this for safety purposes, etc., case dismissed. It was totally absurd. Losing days' work. Losing two nights in jail. We couldn't even find out where he was.” (Note: Norman's son was not a BDS client.)

When New York criminalized “gravity knives” in the 1950's, the term was used to describe large switchblade-like knives. However, the definition included in the law encapsulates all knives that can be opened by gravity or a centrifugal force. In modern times, New York City law enforcement officials and others throughout the state often use the law to arrest and prosecute individuals in possession of pocket knives, utility knives, box cutters, and other items that are commonly used in many professions. A 2014 *Village Voice* analysis found 60,000 gravity knife prosecutions in the last decade. Most cases investigated by the newspaper involved instruments used for work, such as a stagehand's utility knife, and most involved Black and/or Hispanic New

Yorkers. This tracks with BDS' experience. Our criminal defense attorneys report that nearly every client arrested on this charge is carrying a knife for work. Often, they are maintenance workers, stock room attendants, or other types of laborers. Unfortunately, many cannot obtain verification of their employment because their work is unsteady or informal. The vast majority of BDS clients charged with the relevant offense are Black and/or Hispanic. Case dispositions vary from client to client, but all are deeply impacted. They suffer the trauma of arrest and contact with the system, including overnight detention in a filthy holding cell and the humiliation of being churned through arraignments and, very often, allocution to a plea deal involving an admission of guilt – of criminality, essentially. They can also lose their jobs and their children, and even face deportation because of these arrests. The criminalization of simple possession of work tools further poisons the relationship between law enforcement and the community and expands the dragnet of our criminal justice system, all without any public safety interest.

CLIENT STORIES

The following stories provided by BDS attorneys feature individuals who would have been spared arrest under this legislation:

Mr. B was an 18 year-old freshman math major with a merit scholarship at Pace University when he was pulled over for having tinted windows. Peering inside the car, the officer found a folding knife that Mr. B, who worked at an ice skating rink, used to cut laces. Mr. B, who had no criminal history and zero arrests to date, was arrested and detained. His attorney was able to verify his work-related use of the knife and persuaded the District Attorney's office to offer an adjournment in contemplation of dismissal (ACD) with immediate sealing to protect his scholarship. Nonetheless, untold numbers of online for-profit databases may maintain records indicating that he was arrested for "Criminal Possession Weapon-4th: Firearm/Weapon," and Mr. B has since struggled to find employment, suspecting that employers are consulting these databases.

Mr. W, a green card holder, was working for a large moving and storage company in Brooklyn when he was stopped and frisked. He had not consented to the search, but the officer said he matched the description of a robbery suspect. She found a box cutter in his pocket and arrested him for CPW4. He was wearing a mover's uniform, including his company sweatshirt, and was able to provide contact information for his employer. The complaining witness who called in the robbery told police officers that Mr. W was not the one who did it. However, his gravity knife case was open for seven months because the prosecutor insisted on a plea deal that included a weapons charge that would trigger deportation. Fortunately, due to our advocacy, the case was ultimately resolved with an immigration-safe plea deal, but he had already lost his job after missing work for court dates. Altogether, he had an open criminal record indicating an arrest for CPW4 for more than a year, and again, a potentially permanent record accessible through for-profit databases.

T, a 17 year-old adolescent had just gotten a job at a hardware store. He was in his work clothes when he was stopped on the subway because a knife clip was showing in his back pocket. He had used the knife to open boxes at the hardware store, which also sold the knives. He was arrested and incarcerated because he was unable to pay bail. While at Rikers, he was assaulted

and missed his Regents Exams before his family was able to pay a bail bondsman to bail him out. With T at liberty and able to fight his case, prosecutors offered him an ACD and he accepted.

Mr. R, a man, had a fifteen year-old conviction for drug sales and had successfully completed parole. He had trouble getting jobs because of his criminal record, but was eventually able to get and maintain a job for a construction company. After police officers spotted a knife clip in his pocket, he was arrested and charged with possession of a gravity knife. Because of his earlier conviction and court history, the prosecutors were able to convince the judge to set a high bail and Mr. R was incarcerated at Rikers until he eventually plead guilty to the weapons charge just to get out of jail. By that point, he had lost his job.

Mr. S, a 33 year-old maintenance worker at Brightside Academy, an early childhood education center, was arrested and charged with gravity knife possession and low-level marijuana possession. Prosecutors insisted on Misdemeanors for both charges and Mr. S lost his job after the school received a letter informing them that he was charged with "possessing a weapon/firearm." After repeated requests to the Kings County District Attorney's office, we were able to test the knife and found it to be a locking folding knife and not a gravity knife. Prosecutors then agreed to dismiss the case, and the client successfully sued for malicious prosecution and unlawful seizure, but his employer would not rehire him.

J, a 22 year-old, was employed in his father's auto repair shop when he was stopped for a traffic violation. Police officers conducted an illegal search and found a knife under his seat. J told the officers that he used the knife to open boxes at work, but he was arrested and charged with possession of a gravity knife, anyway. One of our attorneys met with the arresting officer and the prosecutor in the case to view the knife. After a few failed attempts, the officer was able to flick open the knife, but only with a significant exertion of force. J had never even tried, much less succeeded, in opening the knife this way. (This is very common in gravity knife cases.) Yet prosecutors refused to outright dismiss the case, and J was sentenced to three full days of community service.

Mr. J, a 25 year-old construction worker, was stopped and arrested when the police officer found an ordinary folding knife in his pocket. He was detained overnight and held at Rikers Island for two days before his mother could pay his bail. After missing additional days of work for multiple court dates as he fought to prove his innocence, he lost his construction job. His case is ongoing, and the enactment of this law would help Mr. J and thousands of other New Yorkers today.

All of the BDS clients cited above were listed as Black and/or "Hispanic" on their arrest reports.

CONCLUSION

S6483 (Savino) / A9042 (Quart) would end a grave injustice and make New York State a better place to live and work. On behalf of our clients, I request that you sign it into law immediately.

If you have any questions, please do not hesitate to contact Jared Chausow at jchausow@bds.org or (718) 254-0700 ext. 382.

Thank you for your consideration our comments.

Sincerely,

Lisa Schreibersdorf
Executive Director
Brooklyn Defender Services

12/21/2016 11:45

(FAX)

P.001/001



Mario F. Cilento
President

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December 21, 2016

Honorable Andrew Cuomo
Governor of the State of New York
State Capitol
Albany, New York 12224

ATT: Alphonso David, Counsel

RE: A. 9042A

Dear Governor Cuomo:

The New York State AFL-CIO, representing over 2.5 million union members, their families as well as our retirees and their families supports the above referenced legislation.

This bill amends the Penal Law to narrow the definition of "switchblade" by excluding gravity knives, which are spring loaded knives used in the workplace for a variety of functions. This will eliminate the potential for arrest and prosecution of workers who have a gravity knife on their person after leaving work.

Gravity knives are used by a variety of building and construction trades, manufacturing, retail and wholesale and countless other industries. They are a necessary tool at many worksites and often are part of a worker's or employer's tool set.

Unlike switchblades, gravity knives are not designed as a weapon and are intended solely for the use as a cutting tool in the workplace. No worker should be arrested for simply carrying a tool that is required and necessary as a part of their daily routine. There are already other laws in place that can be more appropriately applied if someone misuses a gravity knife, or for that matter any other item, as a weapon.

Therefore, on behalf of the New York State AFL-CIO, I respectfully urge this bill be signed into law.

Sincerely,

Mario Cilento
President



October 25, 2016

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

**JustLeadershipUSA Letter of Support
S06483-A / A09042A
“Gravity Knife & Switchblade Reform Law”**

Dear Governor Cuomo,

On behalf of JustLeadershipUSA, I write to respectfully urge you to sign the “Gravity Knife and Switchblade Reform” bill, S06483-A (Savino)/ A09042A (Quart). JustLeadershipUSA is committed to cutting the U.S. correctional population in half by 2030 while increasing public safety. Through passage of S06483-A / A09042A, New York can maintain public safety and uphold the initial intent of New York’s “Gravity Knife” law, while reducing unnecessary arrests.

Every year, thousands of New Yorkers are **needlessly charged and processed through our criminal justice system for carrying knives that are broadly available for purchase**, and frequently used for professional purposes. This is the direct result of the existing, antiquated, “Gravity Knife Law.”

In 1958, state legislators banned knives with blades that fall out of the handle when the user point it at the ground and push a lever—a so called “gravity knife”. Modern knives, for example, pocketknives, bear little resemblance to the knives that were the original subjects of the ban. Many people, including carpenters, construction workers and stagehands, have no idea that their knives can be made to open with a flick of the wrist. Most don’t know that simply possessing such a knife breaks the law. While most “gravity knife” cases don’t go to trial, the arrest itself, and the following entanglement with the justice system, can have a seriously destabilizing effect on a person’s life—particularly for low-income individuals, or individuals with prior convictions.

S06483-A (Sen. Savino)/ A09042A (Assm. Quart) updates the definitions of a switchblade and a gravity knife to exclude knives which have a spring, detent or other mechanism designed to create a bias toward closure, and that requires exertion applied to the blade in order to open the knife. If signed into law, this legislation will exempt from the ban the sorts of knives that are widely available for sale and that the average person would need both hands to open. This would help to reduce the number of unwarranted arrests (and resulting involvement with the criminal justice system) without endangering public safety.

As Governor, you have shown commitment to criminal justice reform and reducing the prison population. In the broader context of mass incarceration, passage of **S06483-A / A09042A** will serve to decrease the number people who become involved with the criminal justice system,

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@JustLeadersUSA

a. JustLeadershipUSA
1900 Lexington Avenue
New York, NY 10035

and move us closer toward ending mass incarceration. I hope that you will strengthen your legacy as a criminal justice reform advocate and **sign So6483-A / A09042A into law.**



Sincerely,

A handwritten signature in black ink, appearing to read "Glenn E. Martin", written in a cursive style.

Glenn E. Martin
Founder and President, JustLeadershipUSA

JustLeadershipUSA supports So6483-A (Savino)/ A09042A (Quartz); and urges Governor Cuomo to sign it into law

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