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DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

PRESIDENT
THOMAS P. ZUGIBE
ROCKLAND COUNTY



June 27, 2016

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

Re: Veto Request for S6483A/A9042A (Savino, Quart) - An act to amend the Penal Law in relation to the definition of switchblade and gravity knives

Dear Governor Cuomo:

On behalf of the District Attorneys Association of the State of New York (DAASNY), I write to express our concerns about the above-referenced bill and to urge its veto.

S6483A/A9042A is meant to protect tradespersons and other bona fide working people, who wish to use illegal knives for legitimate purposes, from arrest and prosecution.

First, as currently drafted, the bill is confusing at best; and dangerous at worst.

If the phrase "exertion applied to the blade by the hand, wrist, or arm" is interpreted to cover the application of centrifugal force, the bill will effectively legalize almost all gravity knives – to the detriment of public safety. Regardless of whether a knife was designed with a "bias toward closure," if that bias can be overcome by a simple wrist flick or eliminated entirely by loosening the tension screw at the knife's joint, the knife can function as a readily-deployable concealable deadly weapon. Statutorily exempting such knives from the definition of "gravity knife," even those that can be used as legitimate tools, does not make them any less dangerous; it simply permits criminals to carry them unchecked. Moreover, the bill engenders needless confusion with respect to switchblades, even though nobody has raised the notion that tradespersons ever need to use switchblades in the course of their work.

The sponsors of the bill claim that "[b]etween 2003 and 2013, 60,000 New Yorkers were arrested for possession of these knives." First, let me clarify that these numbers are misleading – the charge that encompasses gravity knives also applies to the possession of a laundry list of illegal weapons including guns and others¹, not just gravity knives, across the entire state over a 10-year-period. It is neither the practice of the police nor district attorneys offices to arrest and prosecute people for possession of knives in transport to and from work or while performing legitimate employment tasks with those knives.

It is, however, the practice of law enforcement and district attorneys to arrest and prosecute people for carrying dangerous and illegal knives with no legitimate purpose. The reasons are clear: This year alone, the headlines have been replete with stories of slashings,

3 COLUMBIA PLACE, ALBANY, NEW YORK 12210
TEL: (518) 598-8968 EMAIL: PRESIDENT@DAASNY.ORG
WWW.DAASNY.ORG

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

particularly in New York City. Surely it is not the intent of the legislature to make it easier for people to carry dangerous weapons in light of this alarming upward trend in knife crimes.

In early May, Mayor DeBlasio highlighted the increase in knife-related crimes:

“Guns are being taken off of the street in an unprecedented way. Some people are unfortunately turning to a different weapon [knives]... the NYPD will now go get those weapons.”

From January 1 to March 22, 2016, nearly 900 knife crimes were recorded in New York City, an increase of about 22% from the same period in 2015. In early March, the NYPD reported that 212 cutting instruments had been confiscated in the subways, which was a 46% increase over the same period in 2015.

There is no doubt that illegal knives are dangerous. And while we recognize the concerns that the sponsors raise, there is little evidence that bona fide knife users are being arrested and prosecuted when they are using their knife as a tool. Meanwhile, there is ample evidence that criminals are increasingly turning to knives as the weapon of choice.

DAASNY is happy to work together to craft language that will protect the transport or use of gravity and switchblade knives for a legitimate purpose while holding accountable those who carry and use such knives for nefarious purposes. As a starting point, a memo from the New York County District Attorney's Office (attached) provides some options that would satisfy the concerns of the bill sponsors and the law enforcement community in a balanced and measured way.

Until such language can be agreed upon and enacted into law, DAASNY strongly urges you to veto **S6483A/A9042A**.

Sincerely,



Thomas P. Zugibe
President, DAASNY
District Attorney, Rockland County

cc: Senator Savino (savino@senate.state.ny.us)
Assemblyman Quart (quartd@assembly.state.ny.us)

ⁱ There is no way to know how many of those were gravity knives since all of the following weapon types are included in PL 265.01 (1): “any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy,

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blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star."



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000**

M E M O R A N D U M

TO: Senator Diane Savino, Assemblyman Daniel Quart
FROM: New York County District Attorney's Office
CC: Bronx County District Attorney's Office; Kings County District Attorney's Office; Queens County District Attorney's Office, Richmond County District Attorney's Office
DATE: Thursday May 19, 2016
RE: Proposed Bill S6483-A

This memorandum addresses Proposed Bill S6483-A, which proposes changes to the definitions of switchblade knives and gravity knives, defined in Penal Law §§ 265.00(4) and (5), respectively.

Currently, Penal Law § 265.00(4) defines a switchblade knife as "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." Penal Law § 265.00(5) defines a gravity knife as "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." Penal Law §§ 265.01(1) and 265.02(1) criminalize the possession of either kind of knife and impose strict liability upon the possessor. *See People v. Parrilla*, __ N.Y.3d __, 2016 N.Y. Slip Op. 3417 (May 3, 2016).

We understand that Members of the Legislature, including Senator Savino, are concerned that tradespersons, those employed in the crafts and arts, and other bona fide professionals who use folding knives to conduct their work may be subject to arrest and prosecution for work-related possession of knives that, unbeknownst to them, constitute gravity knives. In order to address this concern, Senator Savino has offered Proposed Bill S6483-A. That Proposed Bill alters the language of Penal Law

§§ 265.00(4) and (5) to exempt from the definitions of switchblade knives and gravity knives, “a knife that has a spring, detent, or other mechanism [including but not limited to resistance to opening] 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, unless the knife also includes a bias towards opening after a certain point in the opening process.”¹

At the outset, although criminal defendants sometimes claim that their gravity knives were originally acquired for some work-related purpose, we have not observed, as a practical matter, the problem that has been raised relating to use of such knives in the actual course of employment. It is not the policy of the New York City Police Department to arrest on-the-job workers in possession of business tools for gravity knife possession, nor is it the policy of the New York City District Attorney’s Offices to prosecute such individuals for criminal possession of a weapon. Rather, in the exercise of prosecutorial discretion, even when such individuals are arrested, if it appears to the District Attorney’s Office that an individual was at the time using the knife at issue for a bona fide employment purpose, the case will be quickly dismissed. Thus, while the concern that has been raised is a theoretical possibility, our experience indicates that it does not often arise in reality.

Nonetheless, we recognize that the possibility of ambiguity or abuse in this regard may create a desire for statutory revision. Our concern is that Proposed Bill S-6483-A would create disproportionate public safety concerns by completely legalizing not only those knives commonly used for employment purposes, but many other currently illegal and inherently dangerous knives that are commonly used to commit crimes of violence. As an initial matter, we see no reason to alter Penal Law § 265.00(4), which relates to switchblade knives, at all. Although many workers may possess folding knives for legitimate business purposes, we are unaware of any occupation for which possession of a switchblade is necessary or even desirable, and we have not encountered significant confusion over the applicability of the current switchblade law. Switchblades have long been classified as *per se* weapons and should remain so without exception.

As to gravity knives, our specific concerns are twofold. First, the proposed language excludes from the definition of “gravity knives” any knives that are “designed” in a certain way. We believe that “design” is an inappropriate metric by which to measure the legality of a knife, because a manufacturer’s design can be easily altered by a user. For instance, a user can purchase a lock-blade folding knife “designed” to resist

¹ The bracketed language appears only in the gravity knife provision and appears to render the preceding “spring, detent, or other mechanism” language superfluous.

opening via a wrist flick, but -- using a simple screwdriver or Allen wrench -- eliminate that resistance by loosening the pivot screw that connects the blade to the handle. Second, a “bias toward closure” provides an inadequate assurance that a given folding knife will not be usable as a concealable, immediately deployable deadly weapon. There appears to be universal agreement that folding knives that can be so quickly deployed via a wrist flick should remain illegal; however, knives with a “bias toward closure” low enough to be overcome by a wrist flick will operate in just such a manner. Moreover, the “bias toward opening after a certain point in the process” provision, which assures that “spring assist” knives remain illegal,² does nothing to obviate that concern. Accordingly, while the proposed legislation may serve to protect craftspersons and tradespersons who possess folding knives from prosecution under the gravity knife statute, it will do so at the cost of legalizing even more dangerous knives for use by the general public -- including those who wish to use them for nefarious or violent purposes. Notably, too, this proposed amendment comes at a time when slashing and other crimes involving knife violence in New York City are on the rise.³ Thus, we believe that the proposed change to Penal Law §§ 265.00(4) and (5), which would effectively legalize all gravity knives and engender needless confusion with respect to switchblades, would not promote the public welfare.

We believe that any of several alternative measures described below would address the legitimate concerns of professionals and tradespersons without unduly compromising public safety.

OPTION 1: Penal Law § 265.01(1) could be amended to read, “He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife **with a blade measuring in excess of 1.5 inches**, switchblade knife, pilum ballistic knife” Simultaneously, Penal Law § 265.01(2) would be amended to add, “**gravity knife.**”⁴ This change would retain the current categorical ban on longer gravity knives, which are not commonly used to cut sheetrock, canvas, or other materials used by craftspersons and tradespersons. At the same time, such a worker would be permitted to possess a short-bladed gravity knife absent an

² “Spring assist knives” are folding knives that have a bias toward remaining in the closed position, but forcefully spring open into a locked position once the user slides the blade part of the way out of the handle, either manually or via a wrist flick.

³ As of the end of April, year to date there is a 10% increase in felony assaults citywide, as well as a 17% increase in felony assaults in the City’s subway system – much of which is driven by a rise in stabbings and slashings.

⁴ There would be no reason to include the language “1.5 inches or shorter” in Penal Law § 265.01(2), as that necessarily would be the effect of the law given the change to subdivision (1).

intent to use the knife unlawfully against another person. Put simply, such a worker -- assuredly and without ambiguity -- could insulate himself from *per se* criminal liability by using a common utility knife with an exposed razor blade edge measuring 1.5 inches or less. Notably, both Connecticut and Massachusetts criminalize the possession of some knives if the blade exceeds 1.5 inches in length.

OPTION 2: Penal Law § 265.20(6), which currently exempts from criminal liability the “[p]ossession of a switchblade or gravity knife for use while hunting, trapping or fishing by a person carrying a valid license issued to him . . . ,” could be amended to also exempt a person who possesses a gravity knife “**secured in a closed container being used for the purpose of transporting tools, and while using such a knife for a legitimate business purpose.**” That language would permit craftspersons, etc., to safely and lawfully carry gravity knives to and from their places of employment, and use them to conduct their work or employment duties, without posing the danger presented when the same knives are worn with a belt clip or carried on the street as readily deployable weapons. Alternatively, Penal Law § 265.20(6) could be amended to include a similar licensing exemption; for example, it could be amended to include a provision authorizing “**possession of a gravity knife by a craftsperson or tradesperson carrying a valid license issued by [regulatory agency] while working, or while commuting to or from work.**”⁵

OPTION 3: Penal Law § 265.00(5) can be amended to define a gravity knife as: “any knife which has a blade which is **readily** 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.” In commenting on Penal Law § 265.00(5), both the New York Court of Appeals and the United States Court of Appeals for the Second Circuit have -- in dicta -- already read the word “readily” into the statute as such, so as to perhaps *sub silentio* exclude from the definition of “gravity knife” those knives that open only with great difficulty or when in the hands of a user with inordinate strength or skill. *See Knife Rights v. Vance*, 802 F.3d 377, 380 (2d Cir. 2015); *People v. Dreyden*, 15 N.Y.3d 100, 104 (2010). Although the New York Court of Appeals has already ruled that Penal Law § 265.00(5) does not run afoul of constitutional vagueness concerns (*see People v.*

⁵ This would also necessitate the implementation of a licensing scheme for this purpose.

Fernandez, 16 N.Y.3d 596, 602 [2011]),⁶ such an addition would prophylactically eliminate any remaining perceived ambiguity within the statute. See *New York State Rifle and Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 266 (2d Cir. 2015) (upholding, in the face of a void-for-vagueness challenge, a law criminalizing the possession of ammunition magazines “that ‘can be readily restored or converted to accept’ more than ten rounds of ammunition”) (emphasis added).

OPTION 4: Penal Law § 265.15 can be amended to provide a special affirmative defense similar to one previously proposed by the Office of Court Administration. A subdivision (7) could be added to read, “**It is an affirmative defense to criminal possession of a weapon as provided in subdivision one of section 265.01 or subdivision one of section 265.02 of this article where the weapon possessed is a gravity knife and where the person was currently employed as a craftsperson, tradesperson, or other worker, possessed the knife while at work or while commuting to or from work, and did not intend to use the knife unlawfully.**”⁷

In sum, Proposed Bill S6483-A is not an appropriate solution to address concerns about employment-related use of folding gravity knives because the “designed” and “bias toward closure” language effectively would legalize all gravity knives and needlessly confuse the law concerning switchblades, which would have obvious adverse public safety consequences. The proposals outlined above, either individually or in some combination, would surgically address the concern that has been raised and simultaneously continue to prohibit possession of dangerous knives that so often are used to commit crimes of violence against citizens who look to the law for protection.

⁶ A void-for-vagueness challenge was the “remaining contention[]” that that defendant *Fernandez* had raised, and the court found to be “without merit.” 16 N.Y.3d at 602.

⁷ The OCA bill, introduced in the 2013-14 session as A7177 and S5650, would have created an affirmative defense “where the person did not intend to use [the gravity knife] unlawfully.” That bill was much broader than necessary to address the present concern, as it would have made the defense available regardless of whether the defendant’s possession of the gravity knife served any useful purpose. The text set forth above appropriately makes the defense available only when possession is directly related to employment.
