

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,<sup>1</sup> to jury selection,<sup>2</sup> to sentencing.<sup>3</sup>

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

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<sup>1</sup> 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>.

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

<sup>3</sup> See, e.g., Case of Duane Bucks, <http://www.naacpldf.org/case-issue/duane-buck-sentenced-death-because-heblack>. 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.<sup>4</sup>

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.”<sup>5</sup> 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 Voiced 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.

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

<sup>5</sup> *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,



Sherrilyn A. Ifill  
Director-Counsel and President

Christopher Kemmitt  
Senior Counsel