



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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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The problem the legislation seeks to address has its origin in state penal law provisions that include outdated definitions of “gravity knife” and “switchblade knife.”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*.