



**BROOKLYN
DEFENDER
SERVICES**

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.