



MEMO OF SUPPORT

Brooklyn Defender Services (BDS) strongly supports S4863 (Savino) / A5944 (Quart) into law. This bill simply removes gravity knives, an ill-defined and archaic term, from the weapon possession statute to prevent unfair arrests and prosecutions based on ordinary folding knives that are commonly sold on-line and in hardware stores to workers 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 30,000 indigent Brooklyn residents every year.

EXISTING LAW

Currently, possession of a gravity knife is prohibited under Penal Law § 265.01 (1) as a “strict liability” crime. In other words, simple possession of these knives, even without any criminal intent or action, is a crime. Gravity knife is defined 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.” 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 remove gravity knives from the weapons possession statute. In reality, true gravity knives are very rare, most likely kept as antiques, though police and prosecutors have exploited the overly broad definition in the law to criminalize people for possessing box-cutters and other utility knives. This legislation would amend the law to match people’s very reasonable expectations about the legality of carrying tools. Omitting “gravity knives” from section 265.01 of the penal law would allow law abiding citizens to possess basic work tools without fear of arrest and prosecution. It would 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 any 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, in the eyes of their local police departments and District Attorney, it meets the technical legal definition of a “gravity knife”—a legal definition that a federal judge recently found so unconstitutionally vague that it invites “a high risk of arbitrary and discriminatory enforcement.” BDS represents hundreds of clients every year who are charged with the relevant offense, Criminal Possession of a Weapon in 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. Many of these so-called collateral consequences—or what we call perpetual punishments—can occur even if an individual is never convicted of the offense.

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, if time allowed, 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.

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

CONCLUSION

S4863 (Savino) / A5944 (Quart) would end a grave injustice and make New York State a better place to live and work. Brooklyn Defender Services strong urges the New York State Legislature to pass and the Governor to sign this bill.

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