

Reprinted with permission from the New
York State Bar Association 2022

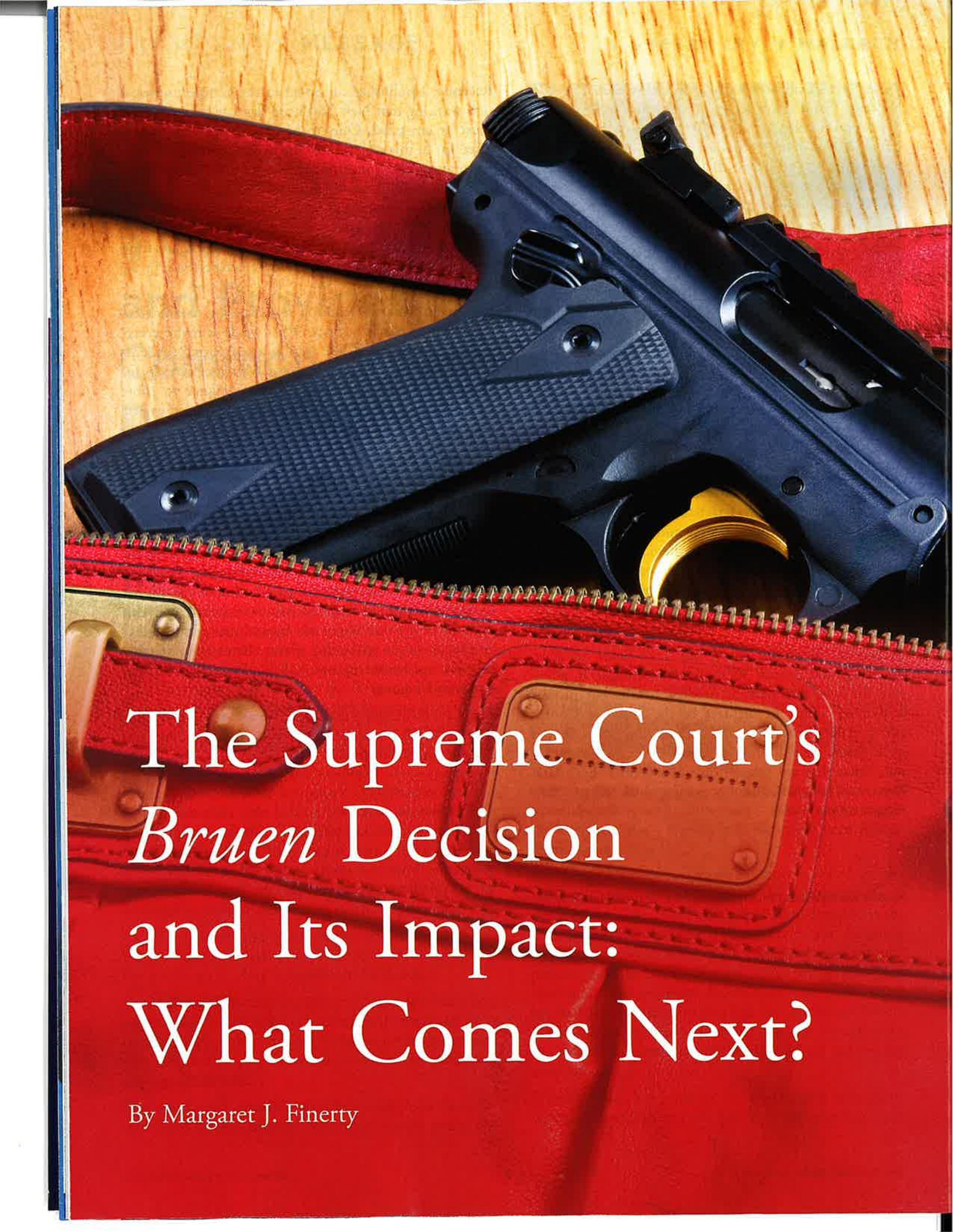
NEW YORK STATE BAR ASSOCIATION

JOURNAL

The Supreme Court's
Bruen Decision and
Its Impact:
What Comes Next?

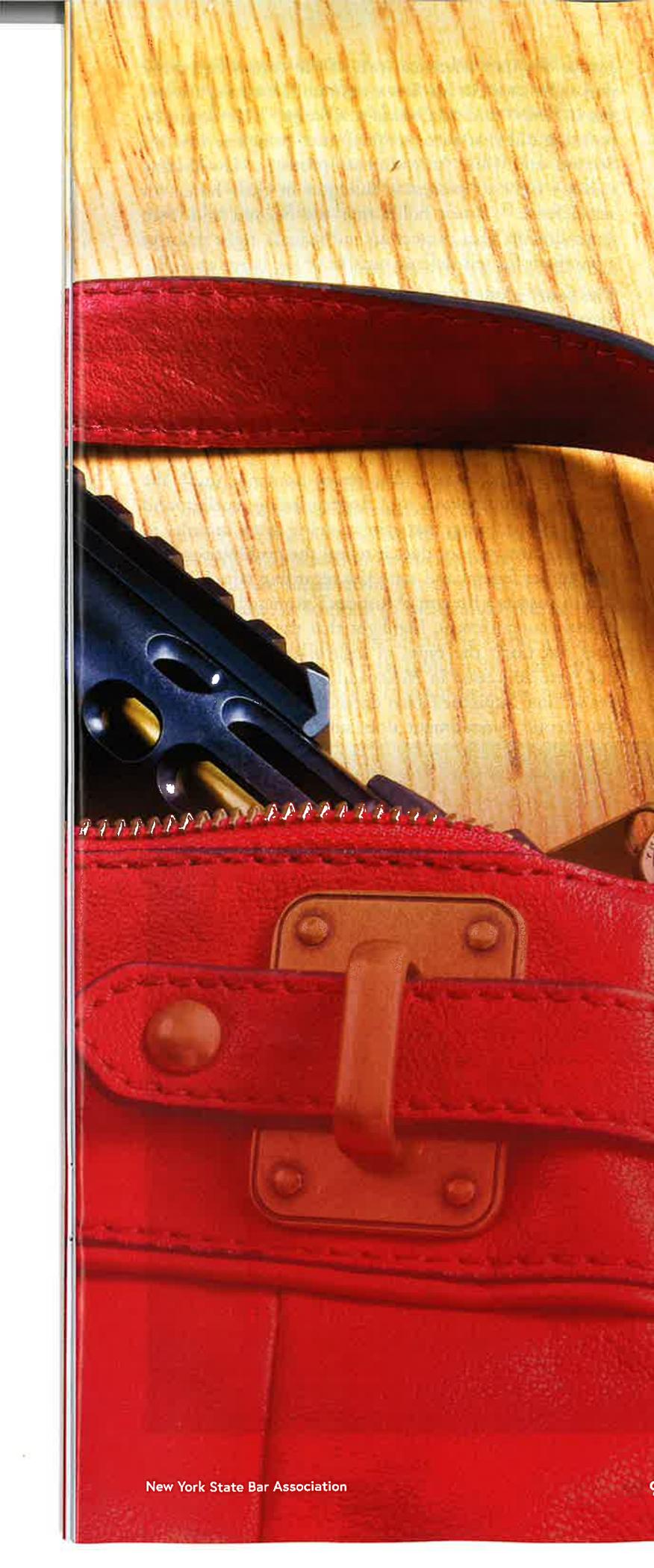


SEPTEMBER/OCTOBER 2022
VOL. 94 | NO. 5



The Supreme Court's
Bruen Decision
and Its Impact:
What Comes Next?

By Margaret J. Finerty



The impact of the *Bruen* decision on New York and throughout the country cannot be overstated. It will result in major changes to present gun regulations, as we have already seen in New York State, and increased legal challenges to existing gun laws, as is already happening. The executive branch, legislators and the courts, as well as lawyers, will have to navigate this new terrain, and the path for doing so is not clear-cut.

The goal is to protect the public while honoring the rights guaranteed by the Second Amendment. To accomplish this, it is essential that those who do not qualify to be a gun owner are not allowed access to guns. Ensuring that thorough background checks can be completed in all transfers of firearms is crucial, in addition to providing law enforcement with access to the most complete set of records regarding a person's background with respect to disqualifying factors. Licensing and training are also key components to ensure responsible gun ownership. As we move forward after *Bruen*, we must adapt to this new legal landscape in a way that protects the Constitution and human life.

Bruen and Its Aftereffects

On June 23, 2022, the United States Supreme Court, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*,¹ rendered one of the most significant decisions to be issued on the Second Amendment in over a decade. It struck down as unconstitutional New York State's concealed carry law that required an individual to prove "proper cause" existed before a license would be issued allowing that person to carry a concealed pistol or revolver in public.² The court held that this "proper cause" requirement violated the 14th Amendment because it prevented law-abiding citizens who have ordinary self-defense needs – as opposed to specific articulable reasons that show they may be vulnerable to harm – from exercising their Second Amendment right to keep and bear arms.

As a result of this decision, New York sprang into action, passing a range of laws on July 1, 2022 during a special legislative session that, among other things, set forth many sensitive locations where a person is not allowed to carry a firearm. Prior to the *Bruen* decision there were legislative efforts in New York and on the federal level to strengthen gun laws. On June 6, 2022, Gov. Hochul signed into law significant legislation in reaction to the horrific shootings that occurred on May 14, 2022 in Buffalo, New York at the Tops Friendly Market in which 10 people were killed and three injured,³ and on May 24, 2022 at a school in Uvalde, Texas where 19 students and two

teachers were killed and more than a dozen other people were wounded.⁴ On June 25, 2022, President Biden signed the Bipartisan Safer Communities Act, the result of a bipartisan compromise to pass gun legislation in the wake of these two dreadful tragedies.

The New York State Bar Association has been a leader in promoting commonsense gun laws that protect people's safety while also protecting their rights under the Second Amendment. On Nov. 6, 2020, NYSBA's House of Delegates adopted the report and recommendations of the Task Force on Mass Shootings and Assault Weapons, which I co-chaired with NYSBA Past President David Schraver. In its report, "Reducing the Epidemic of Mass Shootings in the United States – If Not Now, When?"⁵ the task force set forth several concrete recommendations for legislative change that would go a very long way towards reducing not only mass shootings, but gun violence in general, and suicides. NYSBA has included recommendations set forth in the task force report in its legislative priorities. NYSBA was a co-sponsor, along with the American Bar Association's Standing Committee on Gun Violence, of a resolution to close the "Charleston loophole." This resolution was adopted as ABA policy by its House of Delegates on Aug. 8, 2022 at the ABA's annual meeting.

NYSBA is currently following up on the work of the task force by focusing on extreme risk protection laws, also known as "red flag" laws, which are being utilized more and more as a tool to address the epidemic of gun violence in our country. Red flag laws are an effective means to prevent gun violence, but it is essential that they are administered in a manner that protects the due process and constitutional rights of all parties involved. Extreme Risk Protection Order hearings in New York are governed by the state civil law provisions in Civil Practice Law and Rules Article 63-A. These proceedings can give rise to criminal law and mental hygiene law issues that may impact an individual beyond the protection order and bring into play constitutional protections such as the right to counsel and the right against self-incrimination. NYSBA is studying Extreme Risk Protection Orders in light of these constitutional and due process concerns and will be reporting its findings and recommendations in the future.

The *Bruen* Decision

The *Bruen* decision⁶ overturned a New York law with origins dating back well over a century. New York's law requiring a license to carry a handgun in public harkens back to the 1911 Sullivan Law, which was amended in 1913 to add "good moral character" and "proper cause" as conditions.⁷ The "proper cause" licensing requirement has been interpreted to mean that a person must demonstrate a special need for self-protection that is distinguished from that of the general community.⁸

Justice Thomas references two of the court's last major gun rights cases in his *Bruen* opinion: *District of Columbia v. Heller*⁹ and *McDonald v. Chicago*.¹⁰ He begins by pointing out that these seminal cases recognize that the Second and 14th Amendments protect a law-abiding citizen's right to possess a handgun in their home for self-defense.¹¹ *Bruen* holds that the Second and 14th Amendments also protect an individual's right to carry a handgun for self-defense outside of the home as well.

The court applied a textual and historical analysis of the Second Amendment in reaching its decision.¹² The court found that based on the plain text of the Second Amendment the petitioners have a right to bear arms in public for self-defense. Its historical review concludes that there is no American tradition of firearm regulation that justifies New York's proper cause requirement.

It is important to note that *Bruen* does not undo the licensing requirements, e.g., fingerprinting, background checks and training, that exist in many states in order to possess a firearm, nor does it repeal the prohibitions that exist under federal and state law regarding who is qualified to possess a firearm.¹³ Justices Kavanaugh and Alito, in their concurrences, highlight that the *Bruen* decision does not undo the types of legitimate gun restrictions that were addressed in *Heller* and *McDonald*. These earlier seminal Supreme Court decisions acknowledged that the Second Amendment does not entitle a person "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." They recognized the legitimacy of longstanding prohibitions on who can possess firearms and forbidding their possession in sensitive places, such as schools and government buildings, and specifically noted that these regulatory measures were only examples and not exhaustive.¹⁴

New York's Response to *Bruen*

On July 1, 2022, Gov. Kathy Hochul issued a proclamation convening an extraordinary session of the Senate and Assembly, pursuant to the New York State Constitution, to consider gun legislation in light of the *Bruen* decision. On that date, the governor signed the Concealed Carry Improvement Act into law.¹⁵ This sweeping legislation is designed to address the impact *Bruen* will have on the increase in the number of people in New York carrying concealed firearms in public. New York is the first state to take such action in response to *Bruen*. This extensive package of new laws, which go into effect on Sept. 1, 2022, has a number of significant provisions.

One of the most notable is the listing of numerous sensitive locations where a person cannot carry a firearm in public.¹⁶ A violation of this provision, new Penal Law § 265.01-e, is an E felony. These locations include: places of worship; educational institutions; courthouses; federal, state and local government buildings; polling

sites; public transportation such as subways and buses; health and medical facilities; entertainment venues; shelters, including homeless and domestic violence; daycare facilities; playgrounds and places where children gather; airports; bars and restaurants where alcohol is served; entertainment venues; libraries; public demonstrations and rallies; and Times Square.

Notably, with respect to privately owned property and premises, such as office buildings, the law puts into place a default provision saying that a person may not carry a firearm into those premises unless the owner or lessee of that property has posted a conspicuous sign indicating that the carrying of firearms, rifles or shotguns is allowed.

There are several other significant changes in the law that arose from this special legislative session. They include the following:

- Expands the requirements for a concealed carry permit by requiring: four character references, firearm safety training courses, live fire testing, an in-person interview, information on the applicant's former and current social media accounts from the past three years, in addition to background checks.
- Expands the disqualifications for receiving a concealed carry permit by excluding individuals with documented instances of violent behavior, misde-

meanor convictions for assault, weapons possession and menacing, alcohol-related misdemeanor convictions, such as driving under the influence,¹⁷ recent treatment for drug-related reasons and recent involuntary commitment to a department of mental health facility.

- Requires that licenses are to be recertified or renewed every three years, and the license be revoked if behavior that would result in a denial of a license occurs. If an applicant has knowingly made a material false statement on the application, the license must be revoked; New York's Division of Criminal Justice Services will conduct monthly criminal record and other checks for disqualifying information for licensees.
- Requires that guns be stored safely at home if a person under 18 lives there and prohibits owners from leaving a gun in their car unless it is stored in a lockbox.
- Redefines body vests to include a broader array of bullet resistant protective equipment, including hard body armor.¹⁸
- Directs the state to take the lead in performing its own background checks that will include access to state and local records and databases,¹⁹ as well as

ALTERNATIVE DISPUTE RESOLUTION FROM ANYWHERE.

California's most respected Neutrals are now offering mediations nationwide using secure video conference technology.

SIGNATURE
RESOLUTION

SIGNATURERESOLUTION.COM

the FBI's National Instant Criminal Background Check System.

- Requires background checks for the sale of ammunition.

New York's Response to the Mass Shootings in Buffalo, New York and Uvalde, Texas

Not long before the Supreme Court's decision in *Bruen*, New York took steps to strengthen its gun laws. This followed in the wake of two horrific shootings that shocked the nation. The first occurred on May 14, 2022, in Buffalo, New York, at the Tops Friendly Market in which 10 people were killed and three injured. In that case the shooter was motivated by racism and targeted people of color.²⁰ The second occurred on May 24, 2022, at an elementary school in Uvalde, Texas, where 19 students and two teachers were killed and more than a dozen other people were wounded. It was the deadliest school shooting since 20 children and six adults were murdered in 2012 at the Sandy Hook Elementary School in Newtown, Connecticut.²¹

On May 18, 2022, in response to the tragic shooting in Buffalo, Gov. Hochul issued two executive orders and proposed legislation targeted to address the rise of domestic terrorism and gun violence in the country. In particular, she issued an executive order²² that requires the New York State police to train its members on how to file for an Extreme Risk Protection Order pursuant to Article 63-A of the Civil Practice Laws and Rules and how to apply for a temporary Extreme Risk Protection Order in the Supreme Court where the respondent resides, when there is probable cause to believe that the respondent is likely to engage in conduct that would cause serious harm to the respondent or others, as defined in Mental Hygiene Law § 9.39(a)(1) or (2). Notably, the shooter in the Buffalo case had undergone a psychiatric evaluation in a hospital in June of 2021 after he said he wanted to commit a murder-suicide when asked in school about his plans post-graduation. He was released a couple of days afterwards. The police never sought an Extreme Risk Protection Order and said he had not named a specific target in his threat.²³

Following this, the governor signed into law a 10-bill legislative package on June 6, 2022 that, among other things:

- prohibits the sale of semiautomatic rifles to people under 21 by requiring a license;²⁴
- bans the sale of body armor other than to people in specific professions;²⁵
- expands the list of people who can file for an Extreme Risk Protection Order, and requires that

police and district attorneys apply for such an order when they have credible information that a person is likely to seriously harm themselves or others;²⁶

- expands the definition of a firearm;²⁷ and
- requires social media platforms to provide a way for its users to report hateful conduct and to establish policy on how they would respond to such incidents.²⁸

In both the Buffalo and Uvalde shootings, the gunman was 18 years of age and used an AR-15 assault-style rifle.²⁹ In the Buffalo shooting, the gunman posted a racist manifesto online as well as a video from the camera affixed to the helmet he wore during the shooting.³⁰ The shooter in the Uvalde case posted photos of automatic rifles online and troubling videos involving his mother.³¹ Each of the shooters appeared to have suffered from mental health issues.³² It is clear that New York's recent gun legislation is an effort to address some of the specific issues that are found in these two, and other, shocking mass shootings, in particular, the fact that 18-year-olds were able to purchase such deadly assault-style rifles and that there were warning signs before the shootings, including on social media, that these two individuals might harm themselves or others.

Challenges to Gun Regulations Post-Bruen

As a consequence of the *Bruen* decision, challenges to existing gun regulations, both old and new, are being mounted. In *Bruen*, Justice Thomas noted that in *Heller* the court found, based on a historical analysis, that the Second Amendment protects the possession and use of weapons that are "in common use at the time."³³ Justice Thomas points out, "Nor does any party dispute that handguns are weapons 'in common use' today for self-defense."³⁴ The court's analysis in *Bruen* was based on a textual review of the Second Amendment in light of its historical setting and tradition at the time it was enacted. The court rejected the means-end two-step framework that many appeals courts have utilized in reviewing gun regulations, i.e., if the regulated conduct falls within the scope of the Second Amendment, then the court would evaluate whether the regulation promoted an important governmental interest and the burden it placed on the protected right, i.e., whether the regulation was tailored to achieve that interest. Courts have utilized both a strict scrutiny and intermediate scrutiny analysis in performing their review and reaching a decision.³⁵

Federal lawsuits have been filed in New York, New Jersey and California, citing to the *Bruen* decision, challenging those states' ban on various semi-automatic firearms. The Supreme Court has sent several gun cases back to lower courts for reconsideration in light of *Bruen*.³⁶ In New

York, multiple lawsuits have been filed in federal court to challenge the state's designation of sensitive locations where firearms cannot be carried and the requirement that a weapon cannot be carried onto private property unless the owner or lessee specifically allows it in obvious signage. The requirement to provide social media account information and undergo extensive training has also been criticized.³⁷

Defense attorneys in New York are mounting challenges in criminal gun possession cases based on *Bruen*, arguing that New York's gun licensing provisions are unconstitutional and that their clients had a constitutional right to possess the firearm in public and no obligation to seek a license. To date, these challenges have not been successful.³⁸

We can expect additional future lawsuits throughout the country challenging both gun laws that existed before *Bruen* and new gun laws that are passed to deal with the impact that *Bruen* will undoubtedly have on the increase in the number of people who will now be carrying guns in public settings.

Bipartisan Safer Communities Act

The Bipartisan Safer Communities Act³⁹ was signed into law by President Biden on June 25, 2022. It was the first time in years that the Senate and the House had agreed to pass gun reform legislation. Although the legislation did not go as far as some had hoped, it was universally heralded as a step in the right direction. This legislation, agreed upon in principle prior to the *Bruen* decision and signed into law two days after, came on the heels of the tragic mass shootings in Buffalo and Uvalde and many other incidents of gun violence that did not get the same attention.

The law does close a major loophole that previously existed in federal law: individuals with misdemeanor domestic violence convictions cannot possess a firearm.⁴⁰ Previously, the law only included convictions where the victims were married to the individuals, lived with them or had children with them. The law now includes convictions where the victim was in a dating relationship with the convicted individual. A dating relationship is defined as "a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature."⁴¹ This inclusion only applies, however, if the person seeking to purchase or possess a gun is convicted of a domestic violence crime. This does not apply if there is a domestic violence order of protection and only a dating relationship exists between the parties.

Another significant provision strengthens background checks for gun buyers under the age of 21.⁴² When a background check is performed for a purchaser under 21 years of age, the FBI's National Instant Criminal



Background Check System must now investigate if there are juvenile justice records in the buyer's home state to determine if there is a disqualifying event. Such records will include felony and misdemeanor domestic violence convictions and involuntary commitment to mental health facilities after the potential purchaser turned 16 years old. The relevant state custodian of mental health records and the buyer's local law enforcement agency must be contacted to search for any disqualifying records which would preclude the firearm purchase. Significantly, the law does allow more time to perform a background check, if needed in cases where the potential purchaser is under 21 years of age. The National Instant Criminal Background Check System can have up to 10 business days to do so, but it must inform the seller that it needs additional time. If the check is not complete at that point the sale must go through.⁴³

The requirement of who must obtain a federal firearms license was broadened from those "with the principal objective of livelihood and profit," to anyone selling guns "to predominantly earn a profit."⁴⁴ This is an effort to close what has become known as the "gun show loophole," where individuals not registered as having a federal firearms license regularly sell guns at gun shows or online and do not perform background checks, as this type of license is required to do.

Key provisions in the Bipartisan Safer Communities Act focus on addressing mental health issues. It provides billions of dollars in funding for mental health services and

crisis intervention programs in schools and communities. It provides funding to states to support extreme risk protection order laws.⁴⁵ The act emphasizes that extreme risk protection order court proceedings must be administered in a manner consistent with all constitutional rights and according to due process.⁴⁶

In order to reach a compromise, there were major concessions that had to be made. The law does not require universal background checks for all gun sales, which would include private sales. It does not ban assault weapons or high-capacity magazines. But it does enact some significant changes that will hopefully prevent guns from getting into the hands of those who should not have them under the law.

NYSBA's Ongoing Efforts To Address Gun Violence

NYSBA is continuing its work to address the epidemic of gun violence in our country. NYSBA has included the recommendations set forth in the task force report in its federal legislative priorities. It was a co-sponsor, along with the ABA's Standing Committee on Gun Violence, of a resolution to close the "Charleston loophole" was adopted as ABA policy at its House of Delegates meeting on Aug. 8, 2022. This is a significant resolution and closing this loophole regarding background checks was a specific recommendation in the task force report. The resolution seeks to repeal the federal law, which requires the sale of a firearm to be consummated after a three-business-day period has expired even if the background check has not been completed.⁴⁷ This three-day limit has resulted in numerous tragedies that could have been prevented if additional time had been allowed to complete a thorough background check of a potential purchaser. A fatal and tragic example of such consequences is the horrific shooting that occurred at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, on June 17, 2015. The shooter in that case, Dylann Roof, entered the church and sat through a Bible study group before killing the pastor and eight parishioners. Roof should not have been allowed to purchase the .45-caliber Glock pistol he used to carry out the killings, due to a prior arrest record that revealed possession of a controlled substance and drug use. That would have disqualified him from purchasing the gun.⁴⁸ Because the background check was not completed within three business days, the sale went through, and Roof was able to gain possession of the firearm.⁴⁹

Most background checks can be completed within the three-business-day period, and this resolution would not delay the transfer of a firearm in these instances. Some background checks, however, require more than three business days to be completed, often because there are issues regarding a potential purchaser's qualifications. Frequently in these cases, state and local records need

to be examined for disqualifying events such as misdemeanor domestic violence convictions, which can often slow down the process. This is what happened in the tragic case at the church in Charleston, which gave rise to the term "Charleston loophole." To avoid this and other tragic shootings, the time to complete a background check before a gun is transferred to a purchaser should be extended to a reasonable period of time that allows law enforcement sufficient opportunity to complete a thorough background check, and sufficient funding should be provided to ensure timely processing of the background checks. Twenty-one states have addressed this loophole with the passage of laws that expand the time for background checks in various ways.⁵⁰

The need for additional time to perform background checks has been recognized in the Bipartisan Safer Communities Act. As noted above, it allows up to 10 business days for a background check to be performed when the purchaser is under 21 years of age. It recognizes that checking juvenile records and mental health records at the state and local level can often take longer than the three business days currently required by 18 U.S.C. § 922(t)(1)(B)(ii).

There is also a bill, the Enhanced Background Checks Act of 2021, H.R. 1446 (117th Congress), that was introduced by Rep. Jim Clyburn of South Carolina to close the "Charleston loophole" by expanding the three-business-day limit on federal background checks before a sale can go through.⁵¹ It passed in the House on March 11, 2021. The bill increases the time from three business days to 10 business days for the initial background check. If a background check has not been completed after the 10-day period, the potential purchaser may submit a petition for a final firearms eligibility determination. They must certify that they are not prohibited from purchasing or possessing a firearm when making this request. The FBI will then have an additional 10 business days to complete the background check. If after this 10-day period the background check is still not complete, the federal firearms license holder may transfer the firearm. If the potential purchaser does not petition for an expedited review, they will have to wait until their background check is completed before the sale occurs. As soon as the background check is finalized the firearm may be transferred. This legislation is pending in the Senate.⁵² The bill seeks to balance public safety with a purchaser's lawful right to purchase and possess a firearm.

NYSBA is following up on the work of the task force by focusing on extreme risk protection orders and red flag laws that are being utilized more and more as a tool to address the epidemic of gun violence in our country. Red flag laws are proven to be an effective means to prevent gun violence,⁵³ but, as we stated in the task force report, it is essential that they are administered in a manner that protects the due process and constitutional rights of all parties involved. The task

force report specifically noted that these constitutional and due process concerns were beyond the scope of the report and recommended that NYSBA further study Extreme Risk Protection Orders.

NYSBA is now focusing on the implementation of the extreme risk laws and examining an array of issues that can arise in these proceedings, including:

- the use of findings in Extreme Risk Protection Order proceedings in other proceedings, including criminal and mental health matters;
- the right to counsel;
- the protection against self-incrimination;
- training for law enforcement and others with the authority to seek Extreme Risk Protection Orders, and for judges who preside over the hearings;
- input of professional mental health expertise during a hearing when needed to assist the judge in reaching a determination; and
- expanding the jurisdiction for the courts hearing Extreme Risk Protection Order proceedings to city and county courts.

NYSBA will be reporting on these issues in the future.



Margaret J. Finerty is a partner at Getnick & Getnick in New York City. Her practice areas include federal and state False Claims Act qui tam litigation, IRS and SEC whistleblower matters, corporate monitorships, internal investigations, and business integrity counseling. Finerty served on NYSBA's Executive Committee for eight years and has been a member of its House of Delegates for over 20 years. She recently co-chaired NYSBA's Task Force on Mass Shootings and Assault Weapons and was just appointed to a three-year term as a member of the ABA's Standing Committee on Gun Violence.

Endnotes

1. 597 U.S. ___, 142 S. Ct. 2111 (2022).
2. New York Penal Law § 400.00(2)(f).
3. Jesse McKinley, Alex Traub and Troy Closson, *Gunman Kills 10 at Buffalo Supermarket in Racist Attack*, N.Y. Times, May 14, 2022, <https://www.nytimes.com/live/2022/05/14/nyregion/buffalo-shooting>.
4. *What to Know About the School Shooting in Uvalde, Texas*, N.Y. Times, July 17, 2022, <https://www.nytimes.com/article/uvalde-texas-school-shooting.html>.
5. An online version of the task force report is available at <https://nysba.org/app/uploads/2020/11/12.-Final-Report-11.5.2020-Task-Force-on-Mass-Shootings-and-Assault-Weapons-With-cover-FINAL.pdf>.
6. The case was a 6–3 decision with Justice Thomas writing the majority opinion, and Justices Roberts, Alito, Gorsuch, Kavanaugh and Barrett joining. Justice Breyer wrote a dissent, with Justices Sotomayor and Kagan joining. Justices Alito, Barrett and Kavanaugh wrote concurring opinions, with Justice Roberts joining in Justice Kavanaugh's concurrence.
7. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, (2022).
8. *E.g., In re Klenosky*, 75 A.D.2d 793 (1st Dep't 1980).
9. 554 U.S. 570 (2008).



**THE WAY
NEW YORKERS
CREATE LEGACIES**

For almost 100 years, we have been a trusted partner to professional advisors helping your clients turn assets into a force for good. From appreciated stock to dissolved private foundations, to life insurance and copyrights, our community foundation offers the tax benefits of giving to a public charity paired with the expertise of philanthropic and investment professionals.

Contact The New York Community Trust today.
(212) 686-0010 x363 | giving@nyct-cfi.org



10. 561 U.S. 742 (2010).
11. Justice Thomas noted that *Heller's* textual and historical analysis of the Second Amendment conferred the right to keep and bear arms on the individual regardless of service in the militia. 554 U.S. at 592, 595.
12. The court specifically rejected a means-end scrutiny analysis that is often applied by courts in assessing the constitutionality of laws that impact on constitutionally protected behavior. Means-end scrutiny has been described as:
- [A]n analytical process involving examination of the purposes (ends) which conduct is designed to serve and the methods (means) chosen to further those purposes. When government action is subject to a constitutional limit, courts frequently evaluate the justification for that action. If a sufficient justification exists, the action may be permitted despite the applicability of the limit. If the courts find the justification insufficient, they hold that the action violates the limit and is unconstitutional. Means-end scrutiny is a systematic method for evaluating the sufficiency of the government's justification for its conduct.
- Russell W. Galloway, *Means-End Scrutiny in American Constitutional Law*, *Loyola of Los Angeles L. Rev.*, Vol. 21, No. 2, Art. 1 (1988).
13. See 18 U.S.C. § 922(g). For example, it is illegal for persons in the following categories to possess a firearm: convicted of a crime punishable by imprisonment for more than one year (18 U.S.C. § 922(g)(1)); fugitive from justice (18 U.S.C. § 922(g)(2)); unlawful user of, or addicted to, a controlled substance (18 U.S.C. § 922(g)(3)); adjudicated as a mental defective or committed to a mental institution (18 U.S.C. § 922(g)(4)); illegally or unlawfully in the United States (18 U.S.C. § 922(g)(5)); dishonorably discharged from the Armed Forces (18 U.S.C. § 922(g)(6)); U.S. citizens who have renounced their citizenship (18 U.S.C. § 922(g)(7)); subject to a domestic violence restraining order issued after a hearing on notice (18 U.S.C. § 922(g)(8)); convicted of a misdemeanor domestic violence crime (18 U.S.C. § 922(g)(9)). There are state laws that have added to these categories.
14. *District of Columbia v. Heller*, 554 U.S. 570, 626–27, 661 n. 26 (2008); *McDonald v. Chicago*, 561 U.S. 742, 786 (2010).
15. S.51001/A.41001.
16. 18 U.S.C. § 930 prohibits the carrying of a firearm or other dangerous weapon in a federal facility, such as federal office buildings, as well as a federal courthouse, by anyone who is not authorized to do so. A violation of this provision is a misdemeanor for federal facilities and a felony for federal courthouses.
17. The convictions considered will have occurred within the last five years.
18. The shooter in the Buffalo case was wearing a steel-plated vest, which would be included in this broader definition.
19. Prior to this legislation, New York was one of the states that relied on the FBI to conduct background checks through NICS.
20. McKinley, et al., *Gunman Kills 10 at Buffalo Supermarket in Racist Attack*, N.Y. Times, May 14, 2022, <https://www.nytimes.com/live/2022/05/14/nyregion/buffalo-shooting>.
21. *What to Know About the School Shooting in Uvalde, Texas*, N.Y. Times, July 17, 2022, <https://www.nytimes.com/article/ualde-texas-school-shooting.html>.
22. Executive Order No. 19, *Directing the State Police to File Extreme Risk Protection Orders*.
23. Ashley Southall, Chelsia Rose Marcus and Andy Newman, *Before the Massacre, Erratic Behavior and a Chilling Threat*, N.Y. Times, May 15, 2022, <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>.
24. S.9458/A.10503. In order to obtain a license a person must be 21 years of age or older. Since a person must now have a license to possess a semiautomatic rifle, those under 21 years of age will not be able to buy such weapons. This law would have banned the Buffalo shooter from purchasing the weapon he used.
25. S.9407-B/A.10497.
26. S.9113-A/A.10502. In addition to law enforcement, family members, and school officials having the ability to apply for an Extreme Risk Protection Order, now health care practitioners who have examined an individual within the last six months can do so as well.
27. S.9456/A.10504.
28. S.4511-A/A.7865-A
29. Michael R. Sisak, *22 mass shootings. 374 dead. Here's where the guns came from*, AP News, May 27, 2022, <https://apnews.com/article/ualde-school-shooting-buffalo-supermarket-texas-d1415e5a50eb85a50d5464970a225b2d>; Jonathan Franklin, *Where AR-15-style rifles fit in America's tragic history of mass shootings*, NPR, May 26, 2022, <https://www.npr.org/2022/05/26/1101274322/ualde-ar-15-style-rifle-history-shooter-mass-shooting>.
30. McKinley, et al., *Gunman Kills 10 at Buffalo Supermarket in Racist Attack*, N.Y. Times, May 14, 2022, <https://www.nytimes.com/live/2022/05/14/nyregion/buffalo-shooting>.
31. Robert Klemko, Silvia Foster-Frau and Shawn Boburg, *Gunman bought two rifles, hundreds of rounds in days before massacre*, Wash. Post, May 25, 2022, <https://www.washingtonpost.com/nation/2022/05/25/ualde-texas-school-shooting-gunman>.
32. *Id.*; Southall, et al., *Before the Massacre, Erratic Behavior and a Chilling Threat*, N.Y. Times, May 15, 2022, <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>.
33. 597 U.S. ___, 142 S. Ct. 2111, 2128 (2022) (quoting *Heller*, 554 U.S. at 627).
34. 597 U.S. ___, 142 S. Ct. 2111, 2134.
35. If strict scrutiny is applied the government must prove the law is narrowly tailored to achieve a compelling governmental interest. If intermediate scrutiny is applied, the government must show that the regulation is substantially related to achieving an important governmental interest. Many appellate courts have determined that intermediate scrutiny is appropriate in reviewing Second Amendment cases.
36. This includes a case challenging New Jersey's restrictions on large-capacity magazines. Jacob Gershman, *Challenges to Gun Laws Take Off After High Court Ruling*, *Wall St. J.*, July 24, 2022, <https://www.wsj.com/articles/challenges-to-gun-laws-take-off-after-high-court-ruling-11658664004>.
37. Brian Lee, *Challenges to New York's Conceal Carry Permitting Restrictions Begin in Federal Courts*, N.Y.L.J., July 13, 2022, <https://www.law.com/newyorklawjournal/2022/07/13/challenges-to-new-yorks-conceal-carry-permitting-restrictions-begin-in-federal-courts>.
38. Andrew Denney, *Armed With SCOTUS' Ruling in 'Bruen,' New York Defense Attorneys Fighting Uphill Battle Against Gun Charges*, N.Y.L.J., July 29, 2022, <https://www.law.com/newyorklawjournal/2022/07/29/armed-with-scotus-ruling-in-bruen-new-york-defense-attorneys-fighting-uphill-battle-against-gun-charges>. One Judge that rejected such a challenge in *People v. Rodriguez*, 2022 N.Y. Slip Op. 22217, at *1-3 (Sup. Ct., N.Y. Co. 2022), stated: "Defendant, however, misreads both *Bruen* and the Second Amendment as conferring an unqualified entitlement to possess deadly weapons in public places without restriction"; "*Bruen* . . . did not hold that the State is powerless to criminalize the unlicensed possession of firearms on city streets."
39. Pub. L. 117-159.
40. 18 U.S.C. § 922(g)(9).
41. *Supra* note 39, TITLE II, § 12005(a)(2).
42. As noted in this article, the shooters in the Buffalo and Uvalde mass shootings were 18 years of age. There are numerous instances of mass shootings where the gunmen were under 21 years of age, including the 2018 Marjory Stoneman Douglas High School shooting in Parkland, Florida, and the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut, among many others.
43. *Supra* note 39, TITLE II, Section 12001.
44. *Supra* note 39, TITLE II, Section 12002.
45. *Supra* note 39, TITLE II, Section 12003. Specifically, the funding is to come in the form of grants from the BYRNE JAG Program.
46. See Alexander Bolton, *What's in the Senate's 80-page Bipartisan Gun Safety Bill*, *The Hill*, June 21, 2022, <https://thehill.com/homenews/senate/3532042-whats-in-the-senates-80-page-bipartisan-gun-safety-bill>.
47. 18 U.S.C. § 922(t)(1)(B)(ii).
48. 18 U.S.C. § 922(g)(3).
49. See Michael S. Schmidt, *Background Check Flaw Let Dylann Roof Buy Gun*, *FBI Says*, N.Y. Times, July 10, 2015, <https://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html>; Larry Buchanan, Josh Keller, Richard A. O'Connell, Jr. and Daniel Victor, *How They Got Their Guns*, N.Y. Times, Feb. 16, 2018, <https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html>; Carrie Johnson, *FBI Says Background Check Error Let Charleston Shooting Suspect Buy Gun*, NPR, July 10, 2015, <https://www.npr.org/sections/thetwo-way/2015/07/10/421789047/fbi-says-background-check-error-let-charleston-shooting-suspect-buy-gun>; *Statement by FBI Director James Comey Regarding Dylann Roof Gun Purchase*, FBI Press Release, July 10, 2015, <https://www.fbi.gov/news/press-releases/press-releases/statement-by-fbi-director-james-comey-regarding-dylann-roof-gun-purchase>.
50. *Which States Have Closed or Limited the Charleston Loophole?* Everytown Research and Policy, <https://everytownresearch.org/rankings/law/charleston-loophole-closed-or-limited>. Many states have extended the time allowed for a background check to be completed by: (1) prohibiting the transfer of a firearm until a background check is completed or after the expiration of time greater than three days (e.g., Utah has an indefinite amount of time for a background check to be completed (Utah Code Ann. § 76-10-526(5)(b)); New York requires a license to purchase a handgun, and the FFL holder has up to 30 days before the firearm must be transferred, (N.Y. Penal Law §§ 265.00 et seq., 400.00, 400.01); (2) requiring the purchaser to obtain a license or permit prior to the transfer of a gun (e.g., New Jersey requires a permit to purchase a handgun or a Firearms Purchaser Identification Card to purchase a rifle or shotgun (N.J. Admin. Code § 13-54-1.9)); or (3) requiring mandatory waiting periods before transferring the gun to the purchaser (e.g., California has a 10-day waiting period that can be expanded up to 30 days if the background check is not completed. (Cal. Penal Code § 28220(F)(1)(A)). See also, Giffords L. Ctr., *Browse State Gun Laws* (Jan. 2020), <https://giffords.org/lawcenter/gun-laws/browse-state-gun-laws>.
51. See Bipartisan Background Checks Act of 2021, H.R. 8, 117th Cong. (as passed by House, Mar. 11, 2021); Enhanced Background Checks Act of 2021, H.R. 1446, 117th Cong. (as passed by House, Mar. 11, 2021). See also, Congress.gov, *H.R. 1446 – Enhanced Background Checks Act of 2021*, <https://www.congress.gov/bills/117th-congress/house-bill/1446>; Michael A. Goster, *Federal Firearms Law: Selected Developments in the Executive, Legislative, and Judicial Branches*, Congressional Research Service, Nov. 3, 2021, <https://crsreports.congress.gov/product/pdf/R/R46958>.
52. *Id.*
53. Andy Newman, Benjamin Weiser and Ashley Southall, *How a New York County Used the State's 'Red Flag' Law to Seize 160 Guns*, N.Y. Times, June 5, 2022, <https://www.nytimes.com/2022/06/05/nyregion/red-flag-law-shootings-new-york.html>.