Sheriffs' Response to NY SAFE Act

Following passage of the SAFE Act by the State Legislature and approval by the Governor, the Sheriffs now have had the opportunity to review the language of the new law and wish to make our comments available. The Sheriffs of New York state support many of the provisions of the SAFE Act, and believe that they will enhance public safety and help to shield citizens from gun violence. However, there are also some parts of this new law that need clarification, and some that we think should be reconsidered and modified to meet the concerns of the law enforcement community and the public at large.

We have identified the following six provisions of the new law which we believe are helpful and will increase the safety of our citizens. These include:

- **Restriction on FOIL requests about pistol permit holders.** By granting citizens the option of having their names and addresses withheld from public disclosure, the new law does provide a mechanism to allow people to decide for themselves whether their personal information should be accessible to the public. We believe, however, that no one should have to explain why their personal information should remain confidential. A better procedure, we believe, is simply to exempt all this personal information from FOIL disclosure.
- **Killing of emergency first responders.** The new law makes killing of emergency first responders aggravated or first degree murder, enhancing penalties for this crime and requiring life without parole. First responders need this protection, evidenced all too often by attacks on them when they attempt to provide help, and in special recognition of the terrible attacks on two firefighters in Webster, NY and attacks on first responders in Jefferson County.
- **Requirement of NICS checks for private sales (except between immediate family).** We believe that this will ensure that responsible citizens will still be able to obtain legal firearms through private transactions, with the added assurance that private buyers are approved by the federal National Instant Criminal Background Check System. We remain concerned that this provision will be very difficult to enforce and will likely only affect law abiding citizens.
- **Comprehensive review of mental health records before firearms permits are granted and review of records to determine if revocation of permits is required.** Sheriffs believe that there is an urgent need to increase funding for mental health care. The

new law imposes reporting requirements on many mental health care professionals and others who may make a determination that a person is a danger to himself or others. The law further gives needed authority to courts or others who issue firearms permits to deny permit applications or to revoke permits already issued. We believe that this issue demands a much more full and detailed discussion about how to keep guns out of the hands of such people. The Sheriffs of New York want to pursue these issues with the Governor and the State Legislature.

- **Safe storage of firearms.** The new law provides that guns must be safely stored if the owner lives with someone who has been convicted of a felony or domestic violence crime, has been involuntarily committed, or is currently under an order of protection. We agree that firearms owners should have the responsibility to make sure that their weapons are safeguarded against use or access by prohibited persons, and the new law adds these protections to ensure that weapons are safely and securely stored.
- **Increased penalties for illegal use of weapons.** The new law adds several increased sanctions for violation of New York gun laws and creates new gun crimes which did not previously exist. These new provisions will provide added tools for law enforcement to prosecute such crimes. We further believe that the new provisions should help deter future misuse of firearms. We also suggest that the legislature consider limitations on plea bargaining for all gun crimes.

We have reviewed other provisions of the new law, and strongly believe that modifications are needed to clarify the intent of some of these new provisions and that revisions are needed to allow Sheriffs to properly enforce the law in their counties.

- **Assault weapon ban and definition of assault weapons.** We believe that the new definition of assault weapons is too broad, and prevents the possession of many weapons that are legitimately used for hunting, target shooting and self defense. Classifying firearms as assault weapons because of one arbitrary feature effectively deprives people the right to possess firearms which have never before been designated as assault weapons. We are convinced that only law abiding gun owners will be affected by these new provisions, while criminals will still have and use whatever weapons they want.
- **Inspection of schools by state agencies.** The new law transfers to state agencies the responsibility to review school safety plans. We expect that funding will be transferred to these state agencies to implement safety proposals. Sheriffs and local police provide

this service in all parts of the state and can perform these duties efficiently. As the chief law enforcement officer of the county, Sheriffs are in the best position to know the security needs of schools in their own counties, and the state should help to fund these existing efforts by Sheriffs and local police departments to keep our schools safe. Because Sheriffs and local police are already deeply involved with school safety plans, have developed emergency response plans, and are familiar with structural layouts of schools in their counties, they should be included along with state counterparts in any effort to review school safety plans.

- **Reduction of ammunition magazine capacity.** The new law enacts reductions in the maximum capacity of gun magazines. We believe based on our years of law enforcement experience that this will not reduce gun violence. The new law will unfairly limit the ability of law-abiding citizens to purchase firearms in New York. It bears repeating that it is our belief that the reduction of magazine capacity will not make New Yorkers or our communities safer.
- **Five year recertification of pistol permit status and registration of existing assault weapons.** The new law delegates to the State Police the duty to solicit and receive updated personal information of permit holders every five years in order to maintain these permits. Further, the law requires owners of certain existing firearms now classified as assault weapons to register these with the State Police within one year. The recertification and registration conflict with Sheriffs' duties regarding issuance of pistol permits. All records should be maintained at the local, and not the state level. This information should be accessible to those who are responsible for initial investigation of permit applications. Pistol permit information should be maintained in one file at the local level, and forwarded to a statewide database for law enforcement use. It bears repeating that it is our belief that pistol permit and any registration information required by the law should be confidential and protected from FOIL disclosure.
- **Sale of ammunition.** The new law imposes several new provisions regarding how, and from whom, ammunition can be lawfully purchased. The law should be clarified about the use of the Internet as a vehicle for these sales, out-of-state sales to New York residents, and other issues. Businesses have said that they do not understand the new provisions and are concerned that they will have to cease operations.
- **Law enforcement exemptions must be clarified**. The new law has many provisions that might apply to law enforcement officers and there has been much confusion about whether existing law enforcement exemptions continue to apply. We understand that

the Governor and Legislature have already agreed to review and modify these provisions where necessary, and the Sheriffs want to be part of the discussion to make the changes effective. Additionally, the exemptions should apply to retired police and peace officers, and to others in the employ of the Sheriff and other police agencies who perform security duties at public facilities and events.

- **Method of bill passage.** It is the view of the Sheriffs' Association that anytime government decides it is necessary or desirable to test the boundaries of a constitutional right that it should only be done with caution and with great respect for those constitutional boundaries. Further, it should only be done if the benefit to be gained is so great and certain that it far outweighs the damage done by the constriction of individual liberty. While many of the provisions of the new law have surface appeal, it is far from certain that all, or even many, of them will have any significant effect in reducing gun violence, which is the presumed goal of all of us. Unfortunately the process used in adoption of this act did not permit the mature development of the arguments on either side of the debate, and thus many of the stakeholders in this important issue are left feeling ignored by their government. Even those thrilled with the passage of this legislation should be concerned about the process used to secure its passage, for the next time they may find themselves the victim of that same process. Fortunately, the Governor has shown himself open to working with interested parties to address some of the problems that arose due to the hasty enactment of this law. We will work with the Governor and the Legislature on these issues.
- **Sheriffs understand their Constitutional obligations and the concerns of constituents** Sheriffs and other law enforcement officers are not called upon by this new legislation to go door-to-door to confiscate any weapons newly classified as assault weapons, and will not do so.

Sheriffs represent <u>all the people</u>, and we take an oath to uphold the Constitution of the United States and the Constitution of the State of New York. Sheriffs will continue to enforce all laws of the state and will protect the rights of all citizens, including those rights guaranteed by the Constitution of the United States and the Constitution of the State of New York.