
RESOLUTION NYS SENATE BILLS S1427-2011, S1863-2011 PERSONAL SELF-DEFENSE

01: WHEREAS, Amendment II of the United States Constitution "**A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed**". Self-defense is a fundamental right. The U.S. constitution, the constitutions of 44 states, common law, and the laws of all states recognize the right to use arms in self-defense. Yet no such provision exists within the New York State Constitution enforcing the same rights for the residents of New York City / State.

02: WHEREAS, the Supreme Court, striking down the District of Columbia's handgun ban in District of Columbia v. Heller (2008), ruled that "the inherent right of self-defense has been central to the Second Amendment right," and that the amendment protects "the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment." In Beard v. U.S. (1895), the court approved the common-law rule that a person "may repel force by force" in self-defense, and that, when attacked, a person "was entitled to stand his ground and meet any attack made upon him with a deadly weapon," as needed to prevent "great bodily injury or death." In the Gun Control Act (1968) and Firearms Owners' Protection Act (1986), Congress said that it did not intend to "place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to personal protection, or any other lawful activity."

03: WHEREAS, crime prevention starts at the victim, criminals prefer to victimize unarmed soft targets, but this is profoundly discussed only in a "post crime" manner. Legally armed citizens are a "primary deterrent to crimes" committed against individuals. States with legally armed citizens have statistically less major crime committed against individuals. These crimes are often stopped by license holders but this is not often promoted to the public. Yet nothing is done to support the personal self-defense of New York City resident's by educating and training law abiding citizens in legal concealed carry firearm ownership.

04: WHEREAS, citizens of New York City face personal threats daily, including women with active orders of protection yet there is still no provision for personal self-defense. Although a privileged few influential individuals do possess concealed carry licenses in New York City, how can a "**Constitutional Right**" be extended to a few yet denied to others? Is this privilege based upon monetary or material possessions? In New York City is it legal to defend your property but not your life or your family? Personal self-defense in New York City with a legally concealed carry firearm is non-existent to the average tax paying citizen. This creates a criminal rich environment and the addition of new laws only restricts the law abiding citizen. Criminals are generally not affected by laws until after their apprehension.

05: WHEREAS, New York City licensing does not acknowledge the Constitutional right to personal self-defense through concealed carry. This is an actual "**privilege**" as per the New York State Penal Code [**\$400.00 1. (g) concerning whom no "good cause" exists for the denial of the license.**] This provision is a de-facto total discretionary licensing procedure and allows the Commanding officer of the NYPD Licensing Division total discretion to deny issuing concealed carry firearm licenses to otherwise law abiding qualified citizens.

06: WHEREAS, in New York State, the police have no duty to provide police protection to any particular individual. The Courts in New York have held that "generally, a municipality may not be held liable for the failure to provide police protection because the duty to provide such protection is owed to the public at large, rather than to any particular individual" (Conde v. City of New York, 24 AD3d 595, 596 [2005]; see Cuffy v. City of New York, 69 NY2d 255, 260 [1987]).

07: WHEREAS, requiring an applicant to prove that “**proper cause**” exists for the issuance of a full carry permit when the state has no obligation to protect that individual person only heightens the tension between an individual’s constitutional right to defend themselves and their inability to do so when denied the opportunity to carry a handgun. **This tension becomes a constitutional violation when “proper cause” is not interpreted to include self-defense.** In McDonald, the Supreme Court held that the Second Amendment applies to the States. However, the Court also discussed the right to self-defense.

08: WHEREAS, McDonald v. Chicago, 561 US 3025 (2010), was a landmark decision of the Supreme Court of the United States that determined whether the Second Amendment applies to the individual states. The Court held that the right of an individual to “keep and bear arms” protected by the Second Amendment is incorporated by the Due Process Clause of the Fourteenth Amendment and applies to the states. The decision cleared up the uncertainty left in the wake of District of Columbia v. Heller as to the scope of gun rights in regard to the states.

09: WHEREAS, The District of Maryland just struck down a law virtually identical to New York’s law here at issue for violating the Second Amendment. Woollard v. Sheridan, No. L-10-2068, 2012 U.S. Dist. LEXIS 28498 (D. Md. March 2, 2012) (striking down Md. Public Safety Code § 5-306(a)(5)(ii), requiring “good and substantial reason” to carry handgun). Almost immediately, another federal court found that the Second Amendment secures the right to carry a gun for self-defense outside the home. United States v. Weaver, No. 2:09-CR-00222, 2012 U.S. Dist. LEXIS 29613 (S.D. W. Va. March 7, 2012).

10: WHEREAS, New York State Senate **BILL S1427-2011 - TITLE OF BILL:** Concurrent resolution of the senate and assembly proposing an amendment to the constitution in relation to the right to keep and bear arms.

PURPOSE: This proposed constitutional amendment would provide within the New York State Constitution for a right of the people to keep and bear arms for traditionally recognized purposes. **Sponsor: NYS Senator Saland**

11: WHEREAS, New York State Senate **BILL S1863-2011 - TITLE OF BILL:** An act to amend the penal law, in relation to licenses to carry, possess, repair and dispose of firearms.

PURPOSE: This legislation would remove a gun licensing officer's ability to deny or restrict the issuance of licenses to law abiding citizens who have successfully undergone the state's strict application process and appropriate New York State and Federal Bureau of Investigations fingerprint background check required under law. In addition, this bill will conform New York State law to current ATF requirements regarding background checks for firearms transfers. **Sponsor: Espaillat**

01: THEREFORE BE IT RESOLVED, in the interest of increased public safety the New York City Police Department under its own authority, should support citizens Amendment II rights to personal self-defense. Adopting a fair and proactive “Shall Issue” concealed carry licensing system. Working in conjunction with citizens who have shown a strong sense of responsibility and commitment to their communities such as the NYPD Police Citizens Academy. With respect to the duties, authority and professionalism of the New York City Police Department we can further increase the public safety of residents of New York City by depleting the city of potential victims, its un-armed residents. Together we can educate the citizens of New York City on licensing and enhanced firearms training with an emphasis on young adults and women. Including public safety, NYPD supervised neighborhood watch crime prevention programs and information sharing such as Operation Nexus, etc.

02: BE IT FURTHER RESOLVED, that the residents of New York City / State contact your representative(s) in support of NYS Senate Bills S1427-2011 & S1863-2011 For the purpose of providing law abiding citizens their Constitutional right to legal personal self-defense.