CHIEFLY SPEAKING



Monthly Newsletter for New York State Law Enforcement Leaders

January 2023

INSIDE THIS ISSUE

Click on story title to go to that page

The President's **Message**

Exceutive Director's Column

Former NYSACOP **President News**

Training Calendar

New Laws

The NYS Assembly **Looking Ahead** to 2023

Retirement News

Social Media From **Around New York**

New Facebook Group



New York Supreme Court Justice Deems New York's Red Flag Laws Are **Uconstitutional**

By Peter Howard Tilem

New York State Supreme Court Justice ruled last week that New York's Extreme Risk Protection Order laws, often called Red Flag laws are unconstitutional and declined to issue an Extreme Risk Protection Order (ERPO). As we have written in the past, extreme risk protections have become very popular in anti-gun states and are

a way for government officials to take away the Second Amendment rights of individuals who have not committed any crime. Yet, New York's Red Flag laws were expanded in July of 2022. Justice Thomas E. Moran, of the Rochester based Monroe County Supreme Court struck down these laws in a 10 page decision, in a case entitled G.W. v. C.N., 2022 NY Slip Op 22392 (Monroe County Sup. Ct. 2022).

This particular case highlights everything wrong with Red Flag laws. The Petitioner who filed for the Extreme Risk Protection Order was the estranged boy friend of the



Respondent who was a licensed gun owner in New York State. He alleged that his ex-girlfriend was a danger to herself and others and obtained a Temporary Extreme Risk Protection Order. Justice Moran pointed out that the Petition cited a variety of state-

Have a Safe & Happy New Year

From the New York State **Association of Chiefs of Police** ments that the Respondent allegedly made threatening to harm herself with a gun which the Petition falsely claimed were made within 6 months before the Petition was filed but in fact dated back to 2020 and 2021. The Court also pointed out that there was a Family Court case also going on in which The Petitioner had an Order of Protection against him which among other things barred him from the home that they had shared.

Turning to the Constitutionality of the Article 63-A, which lays out New York's Red Flag laws and procedures, the Court cited the United States Supreme Court decisions in Heller, McDonald and most recently Bruen and applied the Bruen Standard that when the 2nd Amendment's text covers a person's conduct, a law which regulates that conduct is presumptively unconstitutional unless the State can demonstrate that the regulation is consistent with the country's historical tradition of firearms regulations.

The Court also noted that many safeguards of due process that the State had in other analogous situations did not exist in New York's red flag laws. For example, the Court noted that Red Flag laws and the New York Mental Hygiene Law use the same definition for "likely to result in serious harm". However, under the New York Mental Hygiene Law, those determinations are made by a Doctor, a person licensed trained and experienced in making such determinations. However, in the case of New York Red Flag laws, most of the authorized Petitioners are not Doctors and are not licensed, trained or experienced in making that determination. Under the Mental Hygiene Law, two doctors are required to make the determination if a person's liberty is to be taken away for more than 48 hours. No such safeguard is required, not even one doctor is required, before a person loses their gun rights for one year.

Another example cited by the Court is under Article 10 of the Mental Hygiene Law which permits civil detention of certain dangerous sex offenders after they have served their sentence. However, before a Judge can civilly detain someone under this statute, the convicted sex offender is entitled to a Court appointed, free attorney, a state-funded psychiatrist to assist in the defense, a probable cause hearing within 30 days and ultimately a full jury trial before the convicted sex offender's liberty can be taken away. The Court pointed out that none of those protections exist in New York's Extreme Risk Protection order Laws.

The Court pointed out that where mental health issues have formed the basis for a loss of fundamental Constitutional rights in the past in New York, the laws have always provided a number of substantive and procedural due process protections none of which are afforded under New York ERPO laws. The Court reiterated a statement from the Supreme Court that Second Amendment rights are not a second class constitutional right.

We should note that this decision, and the Courts reasoning, may form the basis of also striking down many of the Safe Act provisions as they relate to people with past psychiatric issues being prohibited from purchasing or owning guns.

*Originally printed on the website of Tilem & Associates PC Law Firm www.tilemlawfirm.com

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Congratulations to the 2022 Officer Wellness Grant Recipients:

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- Village of Scotia Police Department
- · Town of Manlius Police Department

PERMA and NYSACOP award funding each year to members who apply to provide their personnel with CordicoShield, a wellness & mental health mobile app for law enforcement officers.

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Chief of Police, Mentor and Friend

It is with profound sadness that we announce the passing of Chief Joseph DelBianco (Ret.). Chief

DelBianco, known to most as "Joe Del", spent 43 years with the Village of Mamaroneck Police Department, retiring as Chief of Police. He was a dedicated member of NYSACOP during his active time and throughout retirement. He served on the Board of Governors as the retired members' representative well into his 90's and this year was appointed "Honorary President" in recognition of his decades of service to the association. Joe was a longtime member of the Westchester County Chiefs of Police Association, where he served as president. In retirement he spent many years as Executive Director of the Westchester Chiefs and was later named Executive Director

Beyond the titles, Joe DelBianco was a friend and

Emeritus to honor his lifetime of service.

mentor to everyone he met. One of the few people who gave con-

stantly and

never asked anything in return, Joe was the patriarch of the Westchester Chiefs and affectionately known as "The Godfather." To my wife and I he was "Uncle Joe" because he looked after us with the love and care of true family. There was never a day when Joe wouldn't ask how he could help or what we needed.

He stayed faithful to the profession and to the Association through challenging times and never gave up on his belief that communities are safer when protected by good cops. His passion for good policing, his energy for supporting those around him, and his love for his community were immeasurable.



Chief Joseph DelBianco

We ask that you keep the DelBiaco family, and especially Joe's beloved wife of 67 years Doreen, in your prayers.

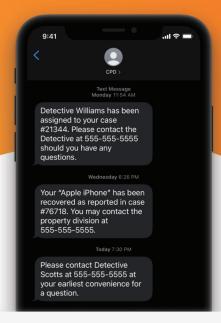
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MPTC Issues New Model Policies

The MPTC recently issued several model policies that may be of assistance to you. Our past president, Chief Tim Parisi of Ilion PD serves on the MPTC and was integral in the development of the policy.

Extreme Risk Protection Order Model Policy<u>Link to ERPO Policy</u>

The policy clearly defines Application, Temporary Extreme Risk Protection Order, Final Extreme Risk Protection order, ERPO Coordinator, Petitioner, Prohibited Weapons, and Respondent. The policy goes on to detail the extreme risk protection order filing process including central issues when considering the need to file for an order as well as statutory factors to consider when establishing probable cause.

The MPTC model policy on extreme risk protec-

tion orders clearly addresses service of the order and gun removal, and proof of service. The policy also addresses storage, release, and disposition of prohibited weapons. Finally, the policy addresses renewal of the ERPO and training.



• Note: A Supreme Court Justice in Rochester, NY recently ruled the "red flag laws unconstitutional" – see cover story

Mandatory Reporting of Child Abuse or Neglect Mandatory Reporting of Child Abuse Model Policy

The policy of course defines all of the appropriate terms and goes on to address reporting and common reasonable cause indicators. Reporting procedures are address as well as training. The policy also addresses taking a child into custody, interviewing a child victim, and medical examinations.

An interesting side note, an elementary school principal in Hilton, NY was recently convicted of multiple counts of sexually abusing children at the school during school hours. This event called into question the role of mandatory reporters and the potential failure to report on some of the other employees of the school that may have witnessed questionable or suspicious conduct by the principal.

Unmanned Aircraft Systems (DRONES) Link to Unmanned Aircraft System Model Policy

This policy addresses the procedures of for deployment of UAS including permissible use of UAS and prohibited use of UAS, as well as procedures for operation. The policy addresses equipment maintenance

and storage and inspections of crew, lighting, line of sight, altitude, and weather conditions.

Records, retention, and review of DME are covered in this policy. Training is of course addressed as well and audit protocol and third-party contact.

Other MPTC model policies can be found at https://www.criminaljustice.ny.gov/crimnet/ojsa/stan-dards/

All these policies are extremely professionally written and comprehensive, I recommend that you review them and compare to your current policy or use them to assist you in the creation of policy.

SAVE THE DATE

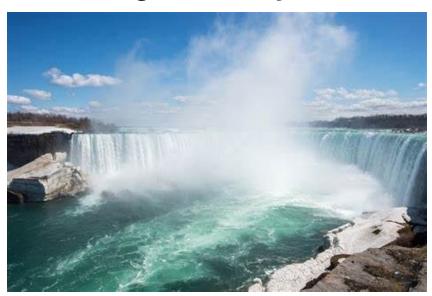
The New York State Association of Chiefs of Police

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Chief and Former NYSACOP President Swears in Son to Department

Malverne Police Chief John Aresta, and former president of the New York State Association Chiefs of Police, proudly had the honor of swearing in and



The ceremony took place at a Village of Malverne Board meeting surrounded by family.

pinning his son, PO Christopher Aresta into his department as their family watched, on January 4, 2023.

Chief Aresta said, "Proudest moment in my 37+

year career. Honored to pass my patrolman's shield on to my son and to be asked to administer his oath of office to my son."

PO Aresta and Chief Aresta mark the first time in the 100 year old Malverne Police De-

partment has ever had a father/son team. It is also the

first time a badge has been passed down in the department. Congratalations to both!

PO Chris Aresta is a former New York State Trooper from Troop NYC for almost 4 years. Pictured here with his wife Melissa.





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CHIEFLY SPEAKING

Training Calendar

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DO you have a training event you would like to share? Email us at dbaresta@nychiefs.org



Wed Jan 11, 2023

DWI Detection and Standardized Field Sobriety Testing Instructor Refresher Course

Category: Training

CLICK HERE FOR MORE INFORMATION AND REGISTRATION LINK

Wed Jan 25, 2023

DWI Detection and Standardized Field Sobriety Testing - Instructor Refresher Course Category: Training

CLICK HERE FOR MORE INFORMATION AND REGISTRATION LINK

Mon Jan 30, 2023

Post Critical Incident Seminar (Admin Level) - Monroe County

Category: Training

CLICK HERE FOR MORE INFORMATION AND REGISTRATION LINK

Thu Feb 9, 2023

DWI Detection and Standardized Field Sobriety Testing - Instructor Refresher Course Category: Training

CLICK HERE FOR MORE INFORMATION AND REGISTRATION LINK

New York State Association of Chiefs of Police





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Summary of Laws Recently Signed by Governor Hochul

The following bills were signed into law by Governor Hochul, several pertain to law enforcement.

Chapter 728: Requires the prioritization of restoring power to police departments, fire departments and ambulance services when there is a power outage.

Chapter 745: Prevents charging a fee under FOIL law for electronic records when they had already been produced in the previous 6 months.

Chapter 730: Requires the state to create a statewide tracking database for sexual assault kits.

Chapter 746: Increases criminal fines for corporations convicted of a crime that leads to death of an employee.

Chapter 751: Prohibits enforcement of violations for placing posters or stickers on windshields or placing or hanging an object in or upon the vehicle that obstructs the view of the driver either in front or rear window in the absence of reasonable cause to believe the operator of such motor vehicle has violated another provision of law.

Chapter 777: Requires commissioner of health to automatically reschedule controlled substances when they are rescheduled at the federal level.

Chapter 783: Extends the COVID benefit for public employee death benefits.

Chapter 805: Creates new crimes for unlawful dissemination of a personal image. This is about posting pictures of certain crime victims while they are being victimized.



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(Ret.) Chief Garcia
Phoenix Police Department



For Release: IMMEDIATELY, December 30, 2022

Contact: Michael Fraser, office: 518-455-3751/cell: 518-859-8518

LOOKING AHEAD TO A PRODUCTIVE 2023

Column from Assembly Minority Leader Will Barclay

As we look forward to the start of a new year, we do so with a sense of optimism and possibility. The beginning of 2023 presents the opportunity to look toward new goals, new ideas and new opportunities. Whether it's a New Year's resolution or start of a new project, each of us goes into the month of January with a renewed focus.

The same applies to legislators returning to Albany. Alongside my colleagues in the Assembly Republican Conference, I am eager to tackle the challenges that lie ahead in 2023 and beyond. There is no shortage of work in front of us.

We saw in public polling immediately following November's election – New Yorkers are not convinced that the state is headed in the right direction, and they believe priority issues remain unaddressed. Heading into a new legislative session, we have a responsibility to develop answers to the problems still troubling our constituents.

We still have a major problem with violent crime. In the coming year, Assembly Republicans will advocate for measures to restore order to our criminal justice system and support law enforcement agencies that have been undermined by policies that make their jobs more difficult.

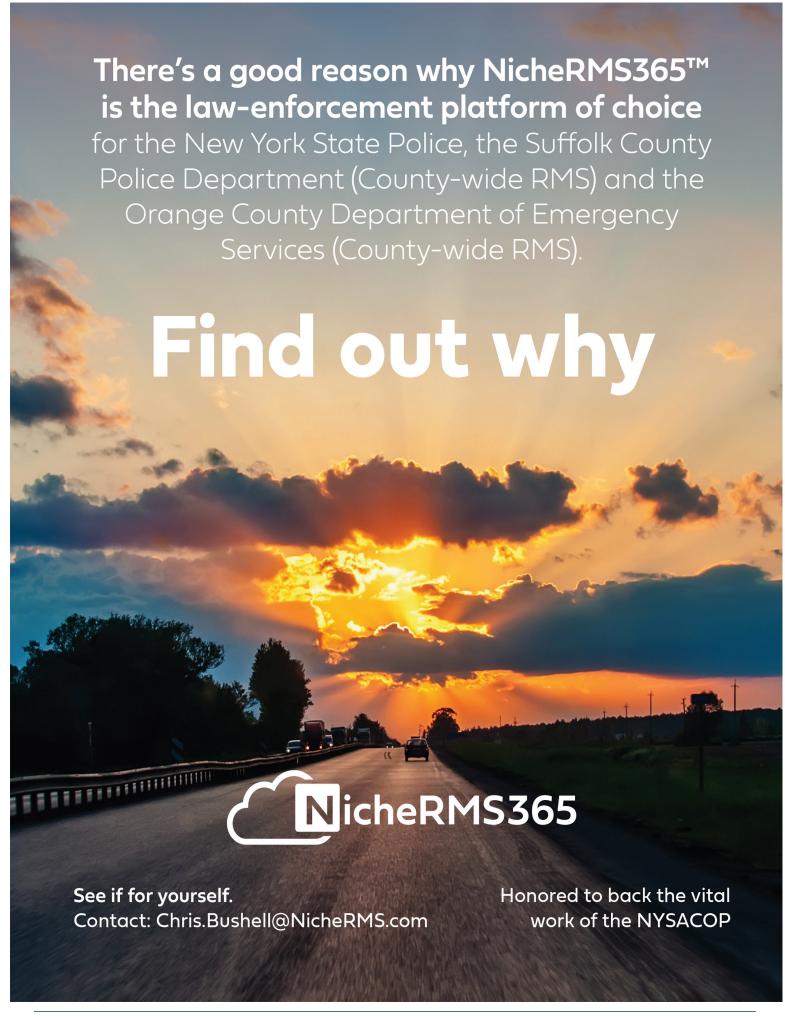
Additionally, we must also continue our fight to reduce the prohibitive tax climate holding back our state's economy, combat the rampant inflation still plaguing consumers and find new ways to add jobs in every sector. This upcoming year, we must make affordability and economic growth a priority.

Recent data from the U.S. Census Bureau illustrates once again that New York's outmigration remains a persistent concern. The latest report shows that the state lost more than 400,000 people in the past two years – the worst in the nation. Affordability is at the root of the problem, and the longer New York remains a high-tax, high-spend, highly regulated state, loss of population is going to continue.

In the coming year, our Conference will advance legislative measures that: support small businesses so they can maximize their success; help students and school districts with the resources needed to deliver a quality education; and push for greater transparency and oversight to protect taxpayers from unnecessary government waste.

There was much to celebrate and be thankful for in 2022. I am proud of the accomplishments of the Assembly Republican Conference and am honored to again be given the opportunity to lead this great group of legislators. As we prepare for another year of doing the people's work, I am hopeful we can find common ground to strengthen this great state. I am looking forward to another year of spirited debate, compromise and progress for the people of New York.

If you have any questions or comments on this or any other state issue, or if you would like to be added to my mailing list or receive my newsletter, please contact my office. My office can be reached by mail at 19 Canalview Mall, Fulton, NY 13069 and by email at barclayw@nyassembly.gov. You may also find me, Assembly Minority Leader Will Barclay, on Facebook or on Twitter at @WillABarclay.





Police body-worn camera (BWC) video footage is an untapped gold mine for agencies. Every day, thousands of hours of BWC video footage is recorded. But nearly all of it remains in storage, unused unless it becomes part of a public records request, personnel complaint or lawsuit.

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You'll Learn:

- Why BWC video is much more than footage—it's data waiting to be mined.
- How a unique program at Washington State University analyzes and codes BWC footage for agencies—for free!
- Ways to incorporate BWC video in various training applications, from the academy and FTO to skills maintenance.

REGISTER NOW

Registration is free.

Can't make it? Register anyway and we'll send you a recording after the event.

Chief Glaser Retires

Old Westbury Police Chief Robert Glaser recently retired from the department after proudly serving the community for over 33 years.



In 2022 Chief Glaser was able to secure \$150,000.00 in grant funding to purchase additional license plate readers to be strategically placed around the 8.5 square mile Village, supplementing an already robust network to assist with gathering intel and evidence on those that commit

crimes within Old Westbury's borders.

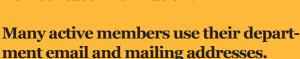
One of Rob's first accomplishments as Chief of the Old Westbury Police Department was to have his Department attain Accreditation from the New York State Accreditation Council, which he was able to attain in 2015 thereby joining the ranks of only 20% of agencies statewide.

Chief Glaser is a strong supporter of NYSACOP, always attending each yearly Conference, all leadership conferences and was part of the NY delegation to the IACP conference annually.

He held several positions before being elected President in 2022 for the Nassau County Chiefs Association. Congratulations on a standout career and best wishes for your retirement.

RETIRING SOON?





Make sure that you don't miss any of our communications, publications and other useful opportunities.



Chief Glaser's family gave him a retirement party attended by family and friends. Pictured above back row I to r; is Commissioner Kenneth Jackson (Zone 2 rep), NYSP Captain William Hulse, Chief Thomas Ruehle Sands Point PD, Chief (ret) Rob Glaser, Old Westbury PD Det. Ed Kehoe, NYPD Lt. (Ret) Ed Monaghan, NYSP Senior Investigator Larry Hemmerich. Front row NYSACOP Past President Chief John Aresta, NYPD PO Thomas Scanio, Lynbrook PD Chief Brian Paladino, Old Brookville PD Chief Chris Walsh, and NYSPP Major Anthony Astacio.

Chief Laird Retires

Alan Laird, Chief of the Irondequoit Police Deparment has retired. Chief Laird released a statement saying his decision was "based upon personal reasons and for my family. I am eternally grateful to the Town of Irondequoit and the support from the community," Laird

wrote. "It is now time for me to be there for my family."

Laird has served in law enforcement for 27 years, 22 of them with the Irondequoit Police Department. He was appointed chief in May 2020 after Richard Tantalo left the



department to take on the role of director of public safety for Monroe County.

"Chief Laird has led the department honorably and, under his leadership, the police department is at full staff for the first time in many years," Irondequoit Town Supervisor Rory Fitzpatrick said in a statement. "We support and respect his personal decision to retire and spend time with his family. We wish him all the best in his retirement."

New NYSACOP Facebook Group



https://www.facebook.com/groups/nysacop

We have a new Facebook group. Click on the link above. The image below is the group you should join. Be adviced the old site is no longer in use.







Social Media Around New York



City of Poughkeepsie Police Department

December 21, 2022 at 2:52 PM · 🕙

Shout out to PBA member, Officer Devon Zanin, for being featured in Les Mills International. Devon isn't only a great cop, but a great role model. This article highlights the stresses that officers are forced to confront regularly and also underscores the importance of physical, mental and emotional strength. Great Job, Devon! And thank you to Les Mills and Gold's Gym for the feature!



Gold's Gym Newburgh

December 18, 2022 at 9:06 AM .

We so appreciate Gold's Gym group ex instructor, Devon Zanin, for her bravery in the line of duty and dedication and loyalty as an amazing instructor for our members at the gym. Devon was recently featured in a publication from Les Mills International. Thank you, Devon!

In her words:

Devon Zanin, US, Police Officer/ BODYPUMP, BODYATTACK™, LES MILLS CORE, SH'BAM™ Crime doesn't sleep and the police work 24 hours a day, 7 days a week, including holidays. A day in the life of a Police Officer in New York is physically, emotionally and mentally demanding. I'm based in Poughkeepsie, and we answer calls about anything: someone losing their dog, having a fight with a spouse, or getting shot. You may have to mediate a situation, save someone's life, or arrest someone for breaking the law. I never know what my day will bring, so I have to be prepared for anything.

Being an Instructor helps me in my day job without a doubt. It keeps me strong and improves my endurance. Teaching has also given me the confidence to be able to put my boots on and say: "I got this!" every single day. My classes are also part of my mental health and overall wellness. I can't tell you how many times I've taught a class after a rough day and felt so much better seeing the smiles on my members' faces.



Two years ago, my partner and I were almost killed. We were ambushed by a male suspect trying to stab us. I don't remember much about the incident, but I'm told that I saved our lives. I got the weapon away within a blink of an eye, and then had to continue to fight for our lives. If I hadn't been as strong or as confident as I am, the outcome could have been very different. The violent altercation lasted 2 and a half minutes, which felt like an eternity. God was watching over me that night. I credit all my years of consistent training, Les Mills classes, believing in myself, and never giving up, to the fact that we came out of that alive.



https://www.facebook.com/groups/nysacop

We have a new Facebook group. Click on the link above. The image below is the group you should join. Be adviced the old site is no longer in use.

