RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would:

(a) make it unlawful for any person to transfer, sell, trade, give, transport, or deliver any unfinished firearm frame or receiver to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) unless (i) the unfinished frame or receiver is serialized in accordance with federal requirements for the serialization of firearms, (ii) the recipient passes a background check consistent with the federal requirements for a licensed dealer's transfer of a firearm, and (iii) the seller or transferor of the unfinished frame or receiver creates and retains records consistent with the federal record-keeping requirements for licensed firearm dealers related to the disposition of firearms; and

b) prohibit the possession, without a federal firearms license, of a finished or unfinished firearm frame or receiver that has not been serialized.
REPORT

Introduction

On November 14, 2019, a sixteen-year-old student walked into his high school in Santa Clarita, California, pulled out a pistol, and shot five other students, two fatally, before killing himself.\(^1\) As a minor, it was illegal for the shooter to purchase or possess a handgun. But the gun he used a homemade pistol assembled from parts available online with no background checks and no questions asked. Because such do-it-yourself guns lack serial numbers and cannot be traced, they are known as “ghost guns” — and they have increasingly become weapons of choice for gun traffickers and those legally prohibited from buying firearms, like minors, felons, and domestic abusers.

Federal law requires those engaged in the business of manufacturing, importing or selling firearms to obtain a federal license to do so. And through the chain from manufacture to retail sale, federal firearms licensees are required to comply with a range of regulations designed to protect public safety. These include critical public safety requirements like conducting background checks before transferring guns to ensure that would-be purchasers are not prohibited from possessing firearms. They also include requirements that firearms have serial numbers and that dealers maintain records on gun sales, so that law enforcement can trace and investigate guns when they are recovered at crime scenes.

In recent years, however, an alarming trend has emerged that threatens all of these regulations and the public safety benefits that they confer. A growing number of purveyors of so-called “ghost guns” undermine the intent of federal gun laws by selling — without any background checks — gun parts and kits that allow anyone to build a do-it-yourself gun with no serial number and no record-keeping. Other entities, similarly, circumvent federal gun laws by promoting “downloadable” ghost guns — guns that can be created using commercially available 3D printers and programming code that is available online. These 3D printed ghost guns not only lack serial numbers, but may also be undetectable by traditional security technology.

Lacking any serial numbers or other identifying features, ghost guns cannot be traced when they are recovered by law enforcement, making them highly attractive to illegal gun traffickers. And because they are available online with the click of a mouse and no background investigation, they are attractive to criminals, prohibited domestic abusers, and others who would fail a background check and be prevented from purchasing a gun if they tried to buy one at a brick and mortar gun store.

In light of the recent proliferation of ghost guns, the ABA should urge policy makers to enact statutes, rules and regulations that would regulate ghost guns just as ordinary

Firearms are regulated, ensuring that law enforcement has the tools needed to protect our communities, and that we keep do-it-yourself guns out of dangerous hands just as we do with other firearms.

I. Ghost gun purveyors exploit loopholes in federal law and threaten public safety.

Under federal law, a firearm is defined in relevant part as a weapon that “expel[s] a projectile by the action of an explosive,” as well as “the frame or receiver of any such weapon.” The “frame” (in the case of a handgun) or “receiver” (in the case of a rifle or shotgun) refers to the portion of the weapon that houses the firing mechanism and to which other components (such as a barrel, stock, or grip) are attached.

Under federal law, anyone engaged in the business of manufacturing, importing, or dealing firearms must obtain a federal firearms license, and federal firearms licensees (“FFLs”) must comply with a number of legal obligations. Before a licensed gun dealer may transfer to a would-be buyer a fully functioning gun — or the frame or receiver of a gun, with or without the other parts required for it to function properly — the dealer must conduct a background check on the buyer. And the dealer must keep a permanent record of the sale and the purchaser’s identity.

Regulated firearm manufacturers and importers must affix to each firearm frame or receiver a serial number and markings that identify the manufacturer or importer, make, model, and caliber. These serial numbers play a critical law enforcement role: if a gun is recovered at a crime scene, local authorities provide the serialization information on a recovered gun to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF can then track firearms back to the first retail purchaser. ATF works extensively with other law enforcement agencies to trace firearms using this technique; in 2017 alone, ATF conducted more than 408,000 traces. Tracing is a powerful investigative tool, but it is dependent on the ability to identify firearms based on their serial numbers.

The proliferation of ghost guns threatens to undermine this critical law enforcement tool. The availability of Computer Aided Design (CAD) files that can be used by widely available 3D printers to manufacture unserialized guns means that anyone with a 3D printer can manufacture an unserialized, untraceable gun with no federal license and no record keeping.

Similarly, certain retailers, operating primarily online and with little to no oversight, have devised a way to skirt federal serialization and background check requirements by marketing “unfinished” frames or receivers that can be turned into fully functioning frames or receivers with minimal tools and effort. These retailers sell “blanks” — nearly complete

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frames or receivers, often referred to as “80% receivers” or “80% frames” — that require limited additional milling before they can be combined with other unregulated gun components to form a fully functioning gun.\(^4\)

Using the proper drill bits and tools that instruct a user where and how to drill, a buyer can convert an 80% component into a fully functioning frame or receiver in a matter of minutes or hours — and videos abound online that demonstrate these easy techniques. What is more, pre-programmed milling machines are available online that will produce a fully functional receiver from an unfinished receiver with nothing more than the press of a button — not even a hobbyist’s or tinkerer’s workshop skills are required to complete the manufacture of a deadly assault weapon or concealable semiautomatic handgun.

But despite the ease of converting an unfinished frame or receiver into a fully functioning one, ATF has ruled that because these items are not 100% completed, they do not meet the relevant definition of “frame or receiver” under federal law. As a result, ATF has ruled that they are not required to carry serial numbers and can be sold without background checks.

Purveyors of ghost gun kits have seized on ATF’s classification to market parts and kits used to make untraceable guns without complying with any of the serialization, background check, or record-keeping requirements that apply in the regulated gun industry. Dozens of online merchants now sell complete kits from which fully functioning semi-automatic handguns or assault weapons can be assembled in a user’s garage or basement with a little elbow grease and a minimal time commitment. Worse, many of these companies sell discounted five- and ten-packs of the parts to make ghost guns, marketing practices that make these products attractive more to those who would traffic illegal guns in bulk than to hobbyists interested in building their own gun for target practice at the local shooting range.

Because ghost gun purveyors maintain that they do not sell or manufacture completed firearms (or completed frames or receivers) they have historically operated without any regulation. The results have been as dangerous as they are predictable. Dangerous individuals whose records prohibit them from legally possessing firearms flock to ghost guns because they are available without a background check. And illegal gun traffickers embrace unserialized ghost guns because, if the guns they traffic are seized in crime, law

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\(^4\) Among the most common 80% receivers sold by ghost gun purveyors are unfinished lower receivers for AR-15 platform firearms. The design of AR-15 firearms includes both a lower and upper receiver, and while ATF classifies the lower receiver as a receiver under 18 U.S.C. § 921(a)(3), a small number of federal judges have concluded in recent years that because the AR-15 design includes a lower and upper receiver, the lower receiver alone does not meet the definition of a “frame or receiver” in 27 CFR § 478.11, which refers to a single, not divided, component. See, e.g. United States v. Jimenez, 191 F.Supp.3d 1038 (N.D. Cal. 2016); United States v. Roh, Tentative Minute Order re Post Trial Motions (No. 14-00167 C.D. Cal. 2017), available at https://armsandthelaw.com/Roh%2C%20Ruling%20on%20AR-15%20receivers.pdf. Whether or not these outlier opinions lead ATF to amend its regulatory definition at § 478.11, jurisdictions should respond to the growing threat posed by the distribution of unfinished and unserialized lower receivers by subjecting them to the regulations described in this report.
enforcement cannot trace them back to the trafficking networks that produce and illegally distribute them.

II. The threat of ghost guns has proliferated in recent years.

Across the country, criminal gun trafficking rings — and prohibited individuals — have increasingly taken advantage of the availability of ghost guns to arm themselves and their criminal networks. Because ghost guns lack serial numbers and are therefore, by definition, untraceable, authoritative data on their provenance and prevalence is unavailable. But a broad range of anecdotal evidence demonstrates that they are a present danger and a growing threat.

A. Ghost guns are favored by gun traffickers.

In 2015, authorities in New York who took down a ghost-gun trafficking ring in Long Island declared that ghost guns were the "new frontier of illegal firearms trafficking."5 This new frontier stretches across the entire nation. In July 2018, for example, across the country from New York, the Los Angeles Police Department broke up a brazen gang-led gun-trafficking enterprise based in Hollywood, seizing dozens of untraceable AR-15 style firearms.6 Indeed, according to ATF, nearly a third — fully 30 percent — of all guns now recovered at California crime scenes are untraceable ghost guns,7 and in Los Angeles, they are even more prevalent. According to Carlos A. Canino, the Special Agent in charge of the ATF Los Angeles Field Division, "Forty-one percent, so almost half our cases we're coming across are these 'ghost guns'."8

Illegal traffic in ghost guns is not limited to any one state, and has occurred in every region of the country, from Massachusetts and Connecticut in the Northeast to Southern California and beyond.9 The former head of ATF’s Philadelphia Field Office stated in

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October 2017, for example, that ghost guns were “being used in crimes, they’re being recovered at crime scenes,” and were widely available in Philadelphia. In 2019, the ATF Special Agent in Charge of the Philadelphia Field Division noted that, in a 12 month period, ATF had recovered nearly four dozen ghost guns in the Philadelphia area alone, and stated that ghost guns were “being taken off of gang members and found at homicide scenes.”

A non-comprehensive list of additional incidents involving ghost gun trafficking includes the following:

- **April 2013, Corpus Christi, Texas**: Michael Yarbrough was sentenced to 10 years in prison for purchasing more than 900 ghost gun parts kits and firearm receivers, and selling AK-47 ghost guns for transport to Mexico.

- **February 2015, Sacramento and Fresno, California**: Luis Cortez-Garcia and Emilian Cortez-Garcia were charged with operating illegal shops in Sacramento and Fresno to sell ghost guns. The brothers did not have a license to sell firearms, did not conduct background checks, and did not require customers to fill out paperwork, as required by federal regulation for those in the business of selling operable firearms.

- **2015, Sacramento, California**: Eight men were indicted for manufacturing and selling firearms without a license. ATF agents recovered a total of 238 firearms and silencers, many of which were ghost guns that did not have any identification markings and were made from blank lower receivers.

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2015, Elk Grove, California: A man pleaded guilty to selling 92 AR-15-style rifles, five handguns, and 88 silencers, all without serial numbers, for $264,500 over a six-month period.15

2016-2017, Kissimmee, Florida: Hector Luis Santiago-Jorge built more than 200 ghost guns and sold them to buyers in Puerto Rico between November 2016 and October 2017. In March 2018, he pleaded guilty to manufacturing and dealing firearms without a federal license. He was sentenced to five years in federal prison.16

January 2018, Hammonton, New Jersey: Gregory Carleton was charged with selling a ghost gun in Hammonton. A search of his home yielded 17 ghost guns, 14 unregistered firearms, and equipment for manufacturing firearms. Law enforcement seized a total of 31 weapons.17

2017-2018, Grass Valley, California: Between December 1, 2017 and February 15, 2018, Michael Paul Grisham Smith, 44, manufactured and sold eight AR-15-style firearms without serial numbers to an undercover agent in exchange for the crypto-currency Bitcoin.18

November 2018, Denver, Colorado: Andrew Luna and Jose Eduardo Trujillo face federal charges after undercover ATF agents purchased numerous ghost guns from them.19

March 2019, New Jersey and Pennsylvania: New Jersey authorities busted a criminal network based in Camden, New Jersey that trafficked ghost gun components. The network planned on trafficking the ghost gun components into New Jersey by having them shipped to Bensalem, Bucks County, Pennsylvania. Investigators intercepted the shipment of components of two assault rifles to Bensalem.20

March 2019, Plattekill, New York: Gregg Marinelli was arrested after he allegedly assembled dozens of ghost guns and sold them to drug-dealing motorcycle groups and individuals with criminal convictions. When the State Police and ATF agents raided his home, they allegedly found gun parts, tools used to make weapons, and several firearms.21

B. Ghost guns have been used in numerous deadly incidents.

Ghost guns have also been used in multiple recent shootings. Just as ghost guns have been favored by California gun traffickers, they have also fueled numerous incidents of violence in the Golden State:

- In June 2013, in Santa Monica, for example, a deranged man named John Zawahri went on a shooting spree with ghost guns and killed five victims. Armed with an AR-15-style semi-automatic rifle he’d assembled with components he’d purchased from various sources, Zawahri first killed his father and brother. He then took a driver hostage and forced her to drive him to the Santa Monica College Campus. Along the way, he shot at a public bus, injuring three individuals. After arriving on campus, he shot and killed the driver and passenger of a car. He then fatally shot a woman outside the college library and opened fire on the students inside. The carnage only ended when police fatally shot Zawahri inside the library.22

- In July 2015, in Walnut Creek, California, a domestic abuser named Scott Bertics shot and killed a woman with whom he was involved in a romantic relationship, Claire Orton. He then used a second gun to kill himself. Both of Bertics’ guns were do-it-yourself ghost guns.23

- The same month, in Stockton, California, gunmen used an AK-47-style ghost gun to take three individuals hostage during a bank robbery. They led police on a chase and shootout, ending with the death of a hostage.24

- And in November 2017, in a northern California community known as Rancho Tehama Reserve, a shooter named Kevin Neal went on a shooting spree that resulted in five dead and 12 injured. Neal killed his wife, shot neighbors, attacked an elementary school, and drove through a small rural community while firing at

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motorists. He was only able to arm himself by obtaining the parts to build two ghost guns, because prior to the shooting, a judge had issued a restraining order against Neal, banning him from possessing firearms.\textsuperscript{25}

As with trafficking in the weapons, the deadly toll of ghost guns is not limited to California. Other tragedies have been narrowly averted. In Pennsylvania, for instance, a police officer responding to a call outside Philadelphia shot and killed a convicted felon who had threatened to shoot the officer with a homemade gun made with parts he ordered online.\textsuperscript{26} The same month, police averted a school shooting outside Philadelphia by a student who had assembled a ghost gun he’d purchased online.\textsuperscript{27} And in West Baltimore, Maryland, in 2016, police came under fire after responding to reports of shots fired near an apartment complex. Two officers returned fire and shot the perpetrator, fatally wounding him. He was armed with a self-made, AR-15-style ghost gun.\textsuperscript{28}

These are only some of the deadly incidents that have been perpetrated in recent years with ghost guns. If policy makers do not act now to rein in this threat to the public, it will only grow worse.

\section*{III. Promising legislative solutions exist to address the dangers of ghost guns.}

Fortunately, there are readily available policy options that can mitigate the threat posed by ghost guns. A comprehensive approach to the problem would impose serialization and record retention requirements on sales of unfinished frames and receivers, require that the recipients of unfinished frames and receivers pass a background check, and prohibit the possession of unserialized frames or receivers, whether finished or unfinished, including frames and receivers created using 3D printers.

In recent years, various federal bills have proposed elements of this approach,\textsuperscript{29} and several states and municipalities have implemented some aspects of this regulatory regime. And while, to date, no state has taken a thoroughly comprehensive approach to

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the problem, comprehensive legislative proposals have been introduced in various states.\textsuperscript{30}

A. Serialization and record retention

There are several approaches to imposing a serialization requirement. The first would require someone who 3D prints a firearm, or the end-user who purchases an unfinished frame or receiver and uses it to assemble a firearm, to apply to a law enforcement entity for a serial number (and to affix that serial number to the completed frame or receiver). For example, in California, before building a self-made firearm, a person must apply to the state Department of Justice for a unique serial number; that number must then be affixed to the firearm within ten days of finishing the frame or receiver.\textsuperscript{31} Because law enforcement only becomes aware of the firearm if and when the individual submits a serial number application, however, there are likely to be substantial enforcement challenges.

A second approach is to prohibit the possession of an unserialized 3D-printed gun, or the purchase or possession of an unfinished frame or receiver that lacks a serial number. For example, New Jersey prohibits the purchase of “a firearm frame or firearm receiver,” including an unfinished frame or receiver, “which is not imprinted with a serial number registered with a federally licensed manufacturer.” A third, similar approach would additionally prohibit the sale or transfer of an unfinished frame or receiver that lacked a serial number. These approaches prohibit the transfer of unfinished frames and receivers or 3D printed guns that lack serial numbers, effectively placing the requirement to serialize on the manufacturer, not the end user.

These latter approaches, particularly when combined with a record retention requirement, are likely to be the most effective. They will enable law enforcement to track unfinished frames or receivers without relying on compliance by the end-user. They eliminate the lag between the completion of a functioning firearm and the serialization of that firearm, during which time the firearm is untraceable. They place the burden of serializing the firearm on the entity with greater manufacturing capabilities. And, perhaps most importantly, by requiring serialization before any transfer, they will prohibit transactions in kits that can be used to produce untraceable guns, denying access to traffickers and others who would ignore any post-manufacture serialization and registration requirements.

B. Background checks

The second key element of comprehensive legislation is requiring that, before any transfer of an unfinished frame or receiver occurs, the would-be purchaser passes a background check consistent with the federal requirements for the transfer of a firearm.

\textsuperscript{30} E.g., Oregon Senate Committee on Judiciary, Proposed Amendments to Senate Bill 978 §§ 14-21, available at https://olis.leg.state.or.us/liz/2019R1/Downloads/ProposedAmendment/15678.

\textsuperscript{31} Cal. Penal Code § 29180(b)(1), id. § 29180(b)(2)(A). Connecticut has a similar requirement, although the individual is to apply for the serial number after completing the firearm. Conn. Gen. Stat. § 29-36(2).
For example, Connecticut imposes the background check procedures that apply to completed firearms to the transfer of an unfinished frame or receiver.\textsuperscript{32}

This intervention closes the loophole that allows those who are prohibited from possessing a firearm to obtain all the parts needed to make a firearm, and ensures that anyone buying a kit to make a firearm is legally allowed to possess the firearm he or she intends to make.

C. Prohibition on possession

The third key element is a prohibition on the possession of an unserialized frame or receiver, whether finished or unfinished, whether produced with a 3D printer or otherwise, unless the possessor holds a federal firearms license. This prohibition complements the aforementioned policies relating to sales or transfers, and would enable law enforcement to pursue appropriate sanctions against individuals who possess untraceable guns, or trafficking rings that possess unserialized frames and receivers. The exception for federal firearms licensees carves out firearm manufacturers to prevent inappropriate application to those involved in the lawful manufacturing of firearms.

Conclusion

Ghost guns, assembled with 3D-printed components or from kits and parts available online with no background checks, are untraceable by law enforcement. These weapons pose a grave threat to public safety, and people who are legally prohibited from owning firearms are able to create them without consequences in most states.

The carnage that ghost guns can inflict is no less than that which can be perpetrated with completed firearms purchased from licensed gun dealers, yet in most of the country, purveyors of ghost gun parts and kits brazenly evade the extensive regulations that apply to the above-board gun industry.

Fortunately, policy makers in various states have identified promising tools to address the growing threat that ghost guns pose. The ABA should urge legislators at every level of government to act immediately to regulate the production and distribution of ghost guns to address this present, growing danger before it becomes even more widespread.

Respectfully Submitted,

Joshu Harris
Chair, ABA Standing Committee on Gun Violence
February 2020

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence

Submitted By: Joshu Harris, Chair

1. **Summary of Resolution(s).**
   Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would make it unlawful for any person to transfer, sell, trade, give, transport, or deliver any unfinished firearm frame or receiver to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) unless the unfinished frame or receiver is serialized in accordance with federal requirements for the serialization of firearms, the recipient passes a background check consistent with the federal requirements for a licensed dealer’s transfer of a firearm, and records consistent with the federal record-keeping requirements for licensed firearm dealers are created and retained. Also urges federal, state, local, territorial, and tribal governments to enact statues, rules and regulations that would prohibit the possession, without a federal firearms license, of a finished or unfinished firearm frame or receiver that has not been serialized.

2. **Approval by Submitting Entity.**
   November 12, 2019

3. **Has this or a similar resolution been submitted to the House or Board previously?** No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**
   This resolution would urge legislators to adopt policies that would regulate self-assembled, do-it-yourself firearms in the same manner as traditional firearms that are manufactured and sold by licensed gun makers and sellers. Because it would treat do-it-yourself guns like any other guns, the broad range of Association policies regarding guns are relevant, but this resolution would not affect or supersede any other resolutions.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**
   NA

6. **Status of Legislation.** (If applicable)
   There are several federal and state legislative proposals to address ghost guns currently pending, including the following:
   - Ghost Guns Are Guns Act, H.R. 1266 (116th Congress, intro. May 9, 2019)
   - Massachusetts H. 2096 (2019)
• Massachusetts S. 1361 (2019)
• New York A. 2492 (2019)
• Pennsylvania H. 1748 (2019)
• Washington S. 5061 (2019)

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
   If adopted this policy can be the basis of advocacy at the federal and state level and possible amicus brief applications. It will also be incorporated into programs that the Standing Committee on Gun Violence offers.

8. Cost to the Association. (Both direct and indirect costs) None

9. Disclosure of Interest. (If applicable) none

10. Referrals.
    Commission on Domestic & Sexual Violence
    Commission on Youth at Risk
    Government & Public-Sector Lawyers Division
    Health Law Section
    Judicial Division
    Section of Family Law
    Section of Litigation
    Section of State and Local Government Law
    Standing Committee on Pro Bono and Public Service
    Tort Trial & Insurance Practice Section
    Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)
    Joshu Harris, Chair
    Philadelphia, PA 19125-3901
    (646) 621-4164

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)
    Joshu Harris, Chair
    Philadelphia, PA 19125-3901
    (646) 621-4164
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would make it unlawful for any person to transfer, sell, trade, give, transport, or deliver any unfinished firearm frame or receiver to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) unless the unfinished frame or receiver is serialized in accordance with federal requirements for the serialization of firearms, the recipient passes a background check consistent with the federal requirements for a licensed dealer’s transfer of a firearm, and records consistent with the federal record-keeping requirements for licensed firearm dealers are created and retained. Also urges federal, state, local, territorial, and tribal governments to enact statues, rules and regulations that would prohibit the possession, without a federal firearms license, of a finished or unfinished firearm frame or receiver that has not been serialized.

2. **Summary of the Issue that the Resolution Addresses**
   A growing number of purveyors of so-called “ghost guns” undermine the intent of federal gun laws by selling — without any background checks — gun parts and kits that allow anyone to build a do-it-yourself gun with no serial number and no record-keeping.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
   It would urge federal, state, local, territorial, and tribal governments to adopt laws that regulate do-it-yourself guns just as traditional firearms are regulated, by applying to homemade guns the same background check, serialization, and record keeping requirements that apply to guns made and sold by licensed gun companies.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   None.