

GHOST GUNS: WHAT PROSECUTORS SHOULD DO TO COMBAT THE NEW FRONTIER OF UNTRACEABLE VIOLENCE

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INTRODUCTION

In 2019, 15-year old Nathaniel Berhow was able to purchase a gun.¹ The process was simple. Presumably, he ordered a kit online, and it arrived, unassembled, in the mail.² He drilled a few holes into the frame, completing the firearm. On his sixteenth birthday, he brought that gun to Saugus High School and began shooting everyone in sight.³ He killed Gracie Anne Muehlberger, a 15-year old, and Dominic Blackwell, a 14-year old.⁴ He critically injured three others and then shot himself.⁵ This story's tragic ending is haunting, but perhaps more upsetting is the ease with which the law could have prevented this tragedy in the first place. Unable to legally purchase a firearm, Berhow turned to a new and more accessible market: ghost guns.

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1. See Hannah Fry, Marisa Gerber, James Qually, Brittny Mejia, Richard Winton & Sarah Parvini, *Saugus High shooter opened fire on crowded quad in 16-second attack that left 2 dead and 3 wounded, sheriff says*, LA TIMES (Nov. 14, 2019), <https://www.latimes.com/california/story/2019-11-14/shooting-reported-at-saugus-high-school-in-santa-clarita-police-searching-for-teen-suspect>.

2. I use “presumably” because it is unknown how exactly Berhow obtained the gun, but it is clear that it was a “ghost gun,” which are purchased and assembled in a predictable manner. See *Santa Clarita school shooting: teen used unregistered “ghost gun” in attack*, Guardian, <https://www.theguardian.com/us-news/2019/nov/21/santa-clarita-school-shooting-ghost-gun> (Nov. 21, 2019); see also *supra* Part I (defining ghost gun kits).

3. See *id.*

4. See *id.*

5. See *id.*

This paper will provide a brief overview of this rapid rise in ghost gun violence. Part I will define ghost guns and summarize the numerous and unique problems stemming from them. Part II will provide the current legal landscape of ghost guns at the federal, state, and local levels. Part III will propose what prosecutors, specifically, should do to combat this violent crime, including: 1) reform internal processes by strategizing how to prosecute those who commit violent crime with or supply ghost guns, designing specific units to target ghost gun violence, and clarifying any existing ghost gun legislation; 2) lobby externally for the adoption of federal legislation and the existence of or clearer state legislation; and 3) pursue civil litigation against ghost gun manufacturers for not complying with regulations.

PART I: WHAT ARE GHOST GUNS?

Definitions

Ghost guns have several defining features.⁶ The phrase “ghost guns” is used by both gun control and gun advocacy organizations to

6. Ghost guns can also be partially defined by what they are not. First, ghost guns are not altered guns where the serial number has been removed, also known as “defaced guns.” See Todd Jones, *ATF Rul. 2013-3*, U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of the Director, [https://www.atf.gov/file/4881/download#:~:text=The%20Gun%20Control%20Act%20of,18%20United%20States%20Code%20\(U.S.C.\)&text=Under%2018%20U.S.C.,removed%2C%20obliterated%2C%20or%20altered.\(July%2010,%202013\)](https://www.atf.gov/file/4881/download#:~:text=The%20Gun%20Control%20Act%20of,18%20United%20States%20Code%20(U.S.C.)&text=Under%2018%20U.S.C.,removed%2C%20obliterated%2C%20or%20altered.(July%2010,%202013).). Although both types of guns are untraceable because of the lack of a serial number, ghost guns cause a larger problem for law enforcement because ghost guns have never had a serial number, meaning federal and state laws preventing defaced guns do not encompass ghost guns. Second, ghost guns do not include all types of guns that cannot be detected by x-ray machines or metal detectors, also known as “undetectable guns.” *Untraceable: The Rising Specter of Ghost Guns*, EVERYTOWN FOR GUN SAFETY (May 14, 2020), <https://www.everytown.org/issues/ghost-guns/>. Although 3D-printed guns are a type of both ghost gun and undetectable gun, not all undetectable guns are ghost guns. See *id.* In other words, undetectable guns are prohibited by federal law, but since not all ghost guns are undetectable, this legislation doesn’t fully encompass the ghost gun problem. See *id.*

describe “do-it-yourself,” or privately made, firearms.⁷ It refers to guns that are constructed by individuals, not licensed manufacturers.⁸

Ghost guns, as opposed to regular guns, have an *unfinished* receiver which is the most important part of any gun since, according to federal law, that is what’s considered the “firearm.”⁹ Most often, finishing the receiver merely requires an individual to drill a few holes into the receiver.¹⁰ They are known as ghost guns because they contain no serial number or unique marking, making them untraceable.¹¹

There are two main types of ghost guns: ghost gun kits and 3D-printed ghost guns. Ghost gun kits are packages an individual can purchase to make and assemble their own gun. They come with the necessary components to build a functioning gun, including the unfinished receiver, drill bits to complete the receiver, a jig to guide the drilling, and step-by-step instructions.¹² All an individual would need to purchase separately is the drill press to make the final holes in the receiver.¹³ They are designed and marketed for anyone to be able to use them.¹⁴ Since they are unregulated, ghost gun kits can be bought online, at in-person gun shows, and in stores.¹⁵

3D-printed guns are the second, and more recent, type of ghost gun. Cody Wilson, founder of Defense Distributed¹⁶ and a self-

7. See *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

8. See, e.g., *ATF & the Rising Threat of Ghost Guns*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/report/atf-the-rising-threat-of-ghost-guns/> (July 15, 2020).

9. See, e.g., Alain Stephens, *What Makes a Gun a Ghost Gun?*, TRACE, <https://www.thetrace.org/2019/12/what-makes-a-gun-a-ghost-gun/> (Dec. 5, 2019); *Ghost Guns*, BRADY UNITED AGAINST GUN VIOLENCE, <https://www.bradyunited.org/fact-sheets/what-are-ghost-guns>; *Frequently Asked Questions About Ghost Guns*, CENTER FOR AMERICAN PROGRESS, <https://www.americanprogress.org/issues/guns-crime/reports/2021/04/02/497817/frequently-asked-questions-ghost-guns/> (April 2, 2021).

10. See, e.g., *id.*

11. See, e.g., *id.*

12. See, e.g., *Ghost Guns*, BRADY UNITED AGAINST GUN VIOLENCE, <https://www.bradyunited.org/fact-sheets/what-are-ghost-guns>; see also *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

13. See, e.g., *Ghost Guns*, *supra* note 12.

14. See, e.g., *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

15. See *ATF & the Rising Threat of Ghost Guns*, *supra* note 8.

16. Defense Distributed, <https://defdist.org/>.

described anarchist, made the first 3D-printed, functional pistol in 2013 called the “Liberator.”¹⁷ Defense Distributed—a private defense contractor—published a downloadable file enabling others to make the 3D-printed gun; in the first two days of its release, the plans were downloaded more than 100,000 times before the U.S. State Department demanded the website take down the files for national security reasons.¹⁸ Since then, however, the plans remain on other internet sites.¹⁹ With these computer code instructions and a 3D printer, an individual could have a functional firearm in less than a week.²⁰ The final gun does not have a serial number, and the code and printer themselves can be obtained without a background check.²¹ Further, the guns are made with polymer, a material that makes them undetectable in metal detectors unless a piece of metal is inserted into the gun.²² These types of ghost guns are not found by police as often because they are not sturdy enough, yet, to handle the heat of repeated firings.²³

Problems

Both types of ghost guns present numerous problems for law enforcement, including prosecutors. First, without a serial number, the guns are untraceable. Gun tracing occurs when a law enforcement agency recovers a firearm used in a crime and traces, based on the gun’s

17. See *Ghost Guns*, *supra* note 12.

18. See Andy Greenberg, *3-D Printed Gun’s Blueprints Downloaded 100,000 Times In Two Days (With Some Help From Kim Dotcom)*, FORBES (May 8, 2013), <https://www.forbes.com/sites/andygreenberg/2013/05/08/3d-printed-guns-blueprints-downloaded-100000-times-in-two-days-with-some-help-from-kim-dotcom/?sh=74496a7810b8>.

19. See Georgi Kantchev, *Authorities Worry 3-D Printers May Undermine Europe’s Gun Laws*, N.Y. TIMES (Oct. 17, 2013), <https://www.nytimes.com/2013/10/18/business/international/european-authorities-wary-of-3-d-guns-made-on-printers.html>.

20. See Ari Schneider, *3D-Printed Guns Are Getting More Capable and Accessible*, SLATE (Feb. 16, 2021), <https://slate.com/technology/2021/02/3d-printed-semi-automatic-rifle-fgc-9.html>.

21. See *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

22. See, e.g., *id.*

23. See Tom Jackman, *D.C.’s ghost-gun law faces legal challenge from Dick Heller, successful gun rights activist*, WASHINGTON POST (Oct. 9, 2021), <https://www.washingtonpost.com/dc-md-va/2021/10/09/dc-ghost-gun-law/>.

serial number, the gun’s first retail purchaser.²⁴ That information is then used to investigate and eventually solve the crime.²⁵ The ATF has called this process “an integral tool in law enforcement’s efforts to reduce firearms-related violence.”²⁶ Current federal law requires gun manufacturers to engrave a serial number on the frame or receiver of any firearm.²⁷ The ATF, however, has long interpreted and based all firearm regulation only on *finished* receivers.²⁸ In other words, ghost guns are not subject to the serial number requirement. Thus, if a ghost gun is recovered during a crime, it is entirely untraceable, making the investigation and prosecution more difficult, especially if no other evidence is retrieved. Moreover, this loophole means that gun traffickers can purchase an unlimited number of ghost gun kits and divert them to the criminal market without a trace.²⁹

Second, ghost guns do not require a background check to purchase or assemble. Based on the ATF’s narrow definition of “firearm,” individuals can purchase ghost guns without undergoing a background check through the National Instant Criminal Background Check System.³⁰ Even in states that have legislated around the “gun show loophole,” requiring background checks for all sales of firearms, ghost guns evade the requirement.³¹ There are no other federal restrictions on who can purchase ghost guns, so individuals usually prohibited from firearm possession are able to evade the restriction by assembling a ghost gun kit at home or obtaining computer code for a 3D printer.³²

Third, ghost guns are easily available over the internet without restrictions. Both types of ghost gun kits are easy to assemble. With

24. See *Ghost Guns*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ghost-guns/>.

25. See *id.*

26. *Ghost Guns*, *supra* note 12.

27. See *Frequently Asked Questions About Ghost Guns*, *supra* note 9. A firearm is defined as “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive” or “the frame or receiver of any such weapon.” *Id.*

28. See *id.*

29. See *Ghost Guns*, *supra* note 12.

30. See *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

31. See *Ghost Guns*, *supra* note 12.

32. See, e.g., *id.*; see *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

ghost gun kits, a person with no gunsmithing experience can turn an unfinished frame into a fully functioning firearm in less than an hour because the instructions are straightforward and the product is marketed to be easily constructable.³³ With 3D-printed guns, a person can search for the code online and need only possess a 3D printer to make the final product.³⁴ Therefore, there are neither legal nor practical barriers to acquiring a ghost gun. Moreover, since they can be purchased online, anyone, even juveniles, can purchase a ghost gun.³⁵ There are also no federal limitations on the number of kits or parts a person buys online.³⁶ In theory, the cost of a ghost gun may create a barrier to purchase. But they are becoming increasingly affordable.³⁷ In fact, the retail price of some ghost gun kits is half that of the finished-firearm equivalent.³⁸ 3D-printers, too, are relatively affordable, sometimes less than \$200.³⁹ All of this leads to little data on how many guns currently exist and where they are located, making it even more difficult to predict and prevent gun violence.⁴⁰

Rise of ghost guns

Ghost guns are both a new and increasingly common phenomenon. A recent study discovered eighty online sellers of ghost guns and found that sixty-eight percent of them began offering ghost guns after 2014.⁴¹ This increase in access to ghost guns has led to a rise in their use in jurisdictions across the United States. For instance, in 2019 in Washington, D.C., there was a 360% increase in recovered ghost guns from the previous year and a 3,733% increase from 2017.⁴² In California, ghost guns accounted for thirty percent of all guns recovered statewide in connection with a crime in 2019.⁴³ In Los

33. See *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

34. See *Ghost Guns*, *supra* note 24.

35. See *Ghost Guns*, *supra* note 12.

36. See *id.*

37. See, e.g., *id.*

38. See *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

39. See *Ghost Guns*, *supra* note 24.

40. See *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

41. *Id.*

42. *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

43. *Id.*

Angeles, specifically, ghost guns accounted for forty one percent of recovered guns according to the ATF.⁴⁴ Philadelphia saw a 152% increase in the recovery of ghost guns between 2019 and 2020.⁴⁵ The recovery of ghost guns in Maryland tripled in 2020, many of them recovered in Baltimore alone.⁴⁶ National trends display a similar increase. The ATF reported recoveries in thirty-eight states, D.C., Puerto Rico, and the Virgin Islands.⁴⁷ Ten thousand ghost guns were recovered in total in 2019 according to the ATF⁴⁸, and of 114 federal prosecutions involving ghost guns from 2010 to 2019, 2,513 were linked to criminal activity.⁴⁹

Though anti-gun control groups argue that ghost guns are primarily used by “hobbyists,” nationwide data supports the claim that they are increasingly involved in mass shootings and have become an essential aspect of the criminal gun market.⁵⁰ Further, online forums show how extremists have begun discussing the relative benefit of ghost guns and sharing advice on how to acquire them.⁵¹ An investigation by The Trace found that anti-government extremists and white supremacists are increasingly committing crimes with ghost guns.⁵²

But ghost guns are used by more than extremists. They are also recovered from domestic violence perpetrators, gang members, drug dealers, former felons, and even minors.⁵³ In fact, the New York City Deputy Inspector noted that ghost guns are more prominently being recovered from young gang-members now as opposed to, in the past, those dealing with a mental illness or hobbyists who could not pass a background check.⁵⁴ Ghost guns have received attention in recent years, though, because of their role in mass shootings. In California, three

44. *Ghost Guns*, *supra* note 12.

45. *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

46. *Id.*

47. Dennis Stoika, Remarks at the Presidential Commission on Law Enforcement and the Administration of Justice Conference Call (April 8, 2020).

48. *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

49. *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

50. *See id.*

51. *See id.*

52. *See Frequently Asked Questions About Ghost Guns*, *supra* note 9.

53. *See Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

54. *See* Jonah E. Bromwich, *Deadly and Untraceable, ‘Ghost Guns’ Are Becoming More Common in N.Y.*, N.Y. TIMES (Sept. 10, 2021), <https://www.nytimes.com/2021/09/10/nyregion/ghost-guns-nypd-crime.html>.

separate shootings involved ghost guns in the last decade; in total, these shootings resulted in the deaths of twelve individuals and injury of dozens.⁵⁵ In two of the incidents, the shooters were prohibited from purchasing regular firearms, and in one, the shooter was too young to possess any firearm.⁵⁶ Mass shootings involving ghost guns have also occurred in places such as Pennsylvania and Ohio.⁵⁷

PART II: WHAT IS THE LEGAL LANDSCAPE?

Federal Level

Federal prosecution is one avenue for punishing those who commit crime with ghost guns. United States Assistant Attorneys, however, can only prosecute under federal law, so they are bound to federal statutes and the ATF's interpretation of those statutes.

As is, there are four main statutes that pertain to ghost guns, none of which Congress passed for the particular purpose of reducing the criminal use of ghost guns. First, the National Firearms Act ("NFA")⁵⁸ imposes an excise tax on the manufacture and transfer of certain firearms and mandates the registration of those firearms.⁵⁹ Additionally, any ownership transfer of an NFA firearm must occur through the NFA registry.⁶⁰

Then, Congress passed the Gun Control Act ("GCA") of 1968 to create stronger gun regulation after the assassinations of President

55. *Ghost Guns*, *supra* note 12.

56. *Id.*

57. *Frequently Asked Questions About Ghost Guns*, *supra* note 9.

58. When the legislation originally passed in 1934, it also imposed a duty on possessors of unregistered firearms to register them, and if that possessor registered, the NFA could give that information to law enforcement and the information could be used to prosecute those whose possession violated state laws. *See National Firearms Act*, U.S. DEP'T OF JUST., BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (April 7, 2020), <https://www.atf.gov/rules-and-regulations/national-firearms-act>. However, in 1968, the Supreme Court held that prosecuting someone based on the registration requirement for possessors of unregistered firearms violated their Fifth Amendment privilege from self-incrimination, making this provision unenforceable. *See Haynes v. United States*, 390 U.S. 85 (1968).

59. 26 U.S.C. §§ 5841-9 (West 2021).

60. *Id.*

John F. Kennedy and Martin Luther King Jr.⁶¹ It requires gun manufacturers to obtain a federal license and mark every gun they produce with a serial number.⁶² They must also keep track of all business transactions, creating a record for each gun. The legislation also expands federal control over more common firearms such as rifles, shotguns, revolvers, and pistols.⁶³ Further, it bans possession from certain categories of people such as felons, domestic abusers, and others.⁶⁴ However, the legislation creates an exemption on the licensing, serial number, and record-keeping of firearms for people who make firearms for their own personal use.⁶⁵ In other words, an unlicensed individual can privately make a firearm, sell it, and have no obligation to register, mark, or keep a record of the gun so long as their activities aren't considered "engaged in business."⁶⁶ The production of ghost guns frequently meets this statutory exception, allowing unlicensed people to make ghost guns and not requiring them to mark it with a traceable serial number.⁶⁷ Under the GCA, whether a frame or receiver meets the statutory definition of a firearm, is determined on a case-by-case basis, meaning there is no clear bright line between an unregulated piece of metal — a ghost gun — and a regulated firearm.⁶⁸

Third, in 1993, Congress passed another bill to help enforce the GCA: the Brady Gun Violence Prevention Act ("Brady Act").⁶⁹ It establishes the federal background check system—the National Instant Criminal Background Check System ("NICS")—and requires federal firearm licensees to check the NICS before transferring a firearm to that

61. See *Gun Control Act*, U.S. DEP'T OF JUST., BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (Jan. 23, 2020), <https://www.atf.gov/rules-and-regulations/gun-control-act>.

62. See 18 U.S.C. §§ 921–31 (West 2021); see also Alain Stephens, *supra* note 9.

63. See Dennis Stoika, *supra* note 47.

64. See *id.*

65. See Alain Stephens, *supra* note 9.

66. See Dennis Stoika, *supra* note 47.

67. See *supra* Part I (defining the ghost gun "loophole").

68. 18 U.S.C. § 921 (West 2021); see also Dennis Stoika, *supra* note 47.

69. See *Brady Law*, U.S. DEP'T OF JUST., BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (July 15, 2021), <https://www.atf.gov/rules-and-regulations/brady-law>.

purchaser.⁷⁰ But similar to the GCA, the Brady Act includes an exemption for privately-made firearms.⁷¹

The fourth and final piece of federal legislation pertaining to ghost guns is the Undetectable Firearms Act of 1988.⁷² It requires all firearms, after the removal of the grip, stock, and magazine, to be detectable by a metal detector.⁷³ Specifically, it must contain at least 3.7 ounces of steel.⁷⁴ Additionally, all major components of the firearm—the barrel, slide, and receiver—must also be detectable.⁷⁵ But the legislation does not specify what part of the firearm must be detectable, so individuals can create a 3D-printed ghost gun that meets the requirements by containing metal in a part of the firearm that can be removed.⁷⁶

Presently, there is no federal legislation addressing ghost guns. For ghost guns, Congress has introduced four laws that would regulate them—the Ghost Guns are Guns Act⁷⁷, the Untraceable Firearms Act of 2019⁷⁸, the Untraceable Firearms Act of 2020⁷⁹, and the Stop Home Manufacture of Ghost Guns Act⁸⁰—but all are stalled in committees.

Given this lack of direct federal legislation addressing the issue, advocacy groups have turned to ATF rulemaking as the most viable avenue for federally prosecuting ghost guns. Federal legislation provides the statutory elements of gun laws, but the ATF actually implements the statutes, and its interpretations define the limits of gun regulation. As mentioned before, the ATF determines on a case-by-case basis whether a frame or receiver is a “firearm.”⁸¹ This occurs through an *ex ante* process: the manufacturer sends their product to the ATF for them to determine if qualifies as a firearm, and the ATF sends back a letter explaining their determination.⁸² Ghost gun businesses often

70. 18 U.S.C. § 922(t) (West 2021); *see also* Dennis Stoika, *supra* note 47.

71. 18 U.S.C. § 922(t) (2021).

72. 18 U.S.C. § 922(p) (West 2021).

73. *Id.*; *see also* *Ghost Guns*, *supra* note 24.

74. 18 U.S.C. § 922(p), *supra* note 72.

75. *Id.*

76. *See* *Ghost Guns*, *supra* note 24.

77. Ghost Guns Are Guns Act, H.R. 1266, 116th Cong. (2019).

78. Untraceable Firearms Act, H.R. 3553, 116th Cong. (2019).

79. Untraceable Firearms Act, S. 3743, 116th Cong. (2020).

80. Stop the Manufacture of Ghost Guns Act, H.R. 7468, 116th Cong. (2020).

81. *See* *Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

82. *See id.*

market these letters on their website, advertising that purchase of their product does not require a background check.⁸³ The ATF has repeatedly determined that unfinished receivers do not meet the statutory definition of a firearm, effectively creating a ghost gun loophole to all federal regulation.⁸⁴

Gun control advocacy groups argue that this interpretation, on its face, contradicts the GCA definition, which states a firearm is anything that “can, *or is designed to, or may readily be converted to be* part of an operable weapon.”⁸⁵ Further, they argue this interpretation is counter to the legislation’s purpose of keeping guns away from individuals who are not legally entitled to possess them.⁸⁶ Others have pointed out that, prior to the mid-2000s—a period when homemade guns became more affordable and the federal Assault Weapons Ban expired—the ATF classified receivers based on the amount of time and work it would take to turn them into a functioning gun.⁸⁷ For instance, the ATF determined that an AR-15 receiver that only took 75 minutes to construct into a rifle was a federally-regulated firearm. Now, however, the ATF does not consider these same AR-15 receivers as firearms so long as the trigger cavity is not milled out.⁸⁸

For years, the National Rifle Association (“NRA”) has worked to limit the ability of the ATF to regulate firearms.⁸⁹ They’ve done this, in part, by working with Congress to block the modernization of the bureau and limit their budget.⁹⁰ Now, however, the Biden Administration has made gun control a top priority, working with the ATF to streamline gun regulations. Most importantly to ghost gun regulation, President Biden announced in April 2021 that he wanted the ATF to issue a proposed rule requiring ghost gun kits to be serialized, and for ghost guns, broadly, to be classified as firearms, making them

83. *See id.*

84. *See id.*

85. *Id.* (emphasis added).

86. *See id.*

87. *See id.*

88. *See id.*

89. *See* Glenn Thrush, Danny Hakim & Mike McIntire, *How the A.T.F., Key to Biden’s Gun Plan, Became an N.R.A. ‘Whipping Boy,’* N.Y. TIMES (May 2, 2021), <https://www.nytimes.com/2021/05/02/us/politics/atf-nra-guns.html>.

90 *See id.*

subject to background checks.⁹¹ He also announced that the ATF would begin a study of criminal gun trafficking, taking ghost guns into account; a study such as this hasn't been conducted since 2000.⁹² Moreover, President Biden nominated an advocate of strict gun rules, David Chipman, to head the ATF, but in September, the White House pulled this nomination after being unable to secure fifty Senate confirmation votes.⁹³

For about a year, Biden's administration did not announce any updates on this ghost gun regulation despite the commenting period ending in August 2021.⁹⁴ But in April 2022, President Biden announced several actions he was taking to address ghost gun violence.⁹⁵ First, he nominated a former United States Attorney and more bipartisan figure, Steve Dettelbach, as ATF Director.⁹⁶ Second, he called on Congress to pass legislation to reduce gun crime.⁹⁷ Lastly, he announced the Department of Justice had issued the final rule regulating ghost guns.⁹⁸

The final rule prohibits the manufacture of ghost gun kits without serial numbers by closing the loophole and clarifying that they

91. See Annie Karni, *Biden Takes Initial Steps to Address Gun Violence*, N.Y. TIMES (April 8, 2021), <https://www.nytimes.com/2021/04/08/us/politics/biden-gun-control.html>.

92. See *id.*

93. See Glenn Thrush, *'This Was a Failure': Biden's A.T.F. Pick Says White House Left Him Open to Attack*, N.Y. TIMES (Sept. 29, 2021), <https://www.nytimes.com/2021/09/29/us/politics/david-chipman-atf.html>; see also Ryan Lucas, *Gun Rights Groups Threatened To Sink Biden's ATF Nominee. He's Withdrawing The Pick*, NPR (Sept. 9, 2021), <https://www.npr.org/2021/09/09/1025428281/biden-withdraw-david-chipman-nominee-atf>.

94. *Submit a Comment on Proposed Rule 2021R-05*, U.S. Dep't of Just., Bureau of Alcohol, Tobacco, Firearms and Explosives (May 24, 2021), <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver/submit-comment>.

95. *FACT SHEET: The Biden Administration Cracks Down on Ghost Guns, Ensures That ATF Has the Leadership it Needs to Enforce Our Gun Laws*, THE WHITE HOUSE (April 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/>.

96. See *id.*

97. *Id.*

98. *Id.*

are legal “firearms” subject to firearm legislation.⁹⁹ Additionally, the rule requires licensed gun dealers to take any unserialized firearms and serialize them before reselling it.¹⁰⁰

Though this rule is a huge step towards addressing ghost gun violence—primarily through closing the loophole—I argue that local prosecutorial actions are more necessary to address the gun ghost epidemic. Given the executive nature of President Biden’s response, all it will take is one anti-gun control President to reverse this change.

State Level

Without adequate federal legislation, state prosecution remains another viable option to deter ghost gun crime. Of course, state prosecutors can only prosecute under state laws, so they, too, are bound to the adequacy of their state’s legislation.

Currently, only eleven states have legislation addressing ghost guns, some more strict than others. Table T1 below attempts to categorize and summarize the extent of state legislation. This is a useful tool to understand the wide variety of current laws, though must be inadequate at addressing the full extent of ghost gun violence. Appendix A lays out the state requirements in fuller detail.

99. *Summary of Final Rule 2021R-05F*, U.S. Dep’t of Just., Bureau of Alcohol, Tobacco, Firearms and Explosives (April 11, 2022), <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver/summary>.

100. *See id.*

Table T1

As of November 2021, these are all the states with current ghost gun legislation. Other states such as Illinois,¹⁰¹ Pennsylvania,¹⁰² and Delaware¹⁰³ have proposed similar reforms but ultimately failed to pass them. Currently proposed legislation is *italicized*.

	Ghost gun kits	3-D printed ghost guns	Serialization of firearms	Those not legally entitled to own firearms	Additional Requirements
CA	- Requires sale to occur through licensed vendor - Requires background check	- Requires 3-D printed guns to be detectable by metal detector	- Required for any assembled firearm	- Prohibits anyone from assisting them with purchase or assembly of firearm	- Requires self-assembled firearms to comply with other state safety precautions
NY	- <i>Prohibits possession of "unfinished receivers" and "ghost guns"</i> - <i>Requires sale to occur through licensed gunsmith</i>	- Prohibits possession, transport, and manufacture	- <i>Requires all gunsmiths to serialize and register all firearms and unfinished receivers</i>	- Prohibits them from possessing "major parts" of a firearm	
D.C.	- Prohibits possession - Prohibits sale and transfer	- Prohibits registration, and thus, possession - Prohibits sale and transfer			
CT	- Requires background check - Prohibits sale and transfer of unserialized, unfinished receivers	- Prohibits all undetectable guns	- Prohibits manufacture of unserialized firearm	- Prohibits them from possessing unfinished receivers	
HI	- Prohibits sale and transfer of unserialized, unfinished receivers to unlicensed individuals - Requires background check and licensing for purchase	- Requires 3-D printed guns to be serialized - Prohibits unlicensed individuals from producing unserialized 3-D printed guns	- Requires dealers to serialize and register all firearms <i>before</i> they are assembled by purchaser		
MA		- Prohibits sale, transfer, and possession of any undetectable gun - <i>Prohibits manufacture or</i>	- <i>Requires any individual assembling firearm to serialize and register it</i>		

101. H.B. 2253, 101st Gen. Assemb. (Ill. 2019).

102. H.B. 1527, 2019 Leg., Gen. Assemb. (Pa. 2019).

103. H.B. 277, 150th Gen. Assemb. (Del. 2020).

		<i>assembly of any 3-D printed gun</i>			
NJ	- Prohibits purchase of unserialized receiver	- Prohibits manufacture and sale of 3-D printed guns - Prohibits use of 3-D printer to manufacture firearm - Prohibits distribution of electronic 3-D printing instructions	- Prohibits possession, sale, or manufacture of any unserialized firearm		- Prohibits manufacturing firearms without a license
RI	- Prohibits possession, manufacture, and sale	- Prohibits possession, manufacture, and sale of any undetectable firearm or 3-D printed firearm			
VA		- Prohibits manufacture, sale, and possession of "plastic firearms"			
WA		- Prohibits manufacture, sale, and possession of undetectable guns or part designed for use in undetectable gun - Prohibits assembly or repair of undetectable gun - Grants state authority to seize any illegally possessed undetectable firearm	- Prohibits manufacture of unserialized firearm with the intent to sell it	- Prohibits anyone from assisting them with acquiring undetectable or unserialized firearm	
NV	- Prohibits possession, sale, and transfer of unserialized, unfinished receiver unless purchaser and seller are firearms manufacturers		- Prohibits the manufacture, assembly, sale, and possession of unserialized firearm		

Local Level

In the face of either slow or entirely absent state action to combat ghost gun violence, some municipalities have passed ordinances addressing the issue. For instance, in Pennsylvania where state-level ghost gun legislation failed to pass, the city of Philadelphia passed their own ordinance in January 2021.¹⁰⁴ The ordinance criminalizes the manufacture of firearms or parts using a 3D printer without a federal license.¹⁰⁵ Additionally, the city prohibits a person from converting an unfinished frame into a functional firearm and bans the sale or transfer of a “firearm finishing device” — any device with the primary purpose of converting an unfinished frame into a firearm — and unfinished frames altogether unless the seller and purchaser are both federally licensed dealers.¹⁰⁶

Additionally, even in California where ghost gun legislation exists, the San Diego city council approved a ghost gun ordinance because the state law is not effective until July 2022, and they wanted to take “immediate action” in light of a ghost gun shooting in April 2021.¹⁰⁷ The Mayor signed the ordinance, making it effective October 14, 2021.¹⁰⁸ The Eliminate Non-Serialized Untraceable Firearms (“ENUF”) ordinance bans the sale and possession of unserialized firearms and unfinished frames and receivers.¹⁰⁹ The efficacy of local ordinances is unknown because of their limited number and recency, but they could be the last frontier for addressing ghost gun violence if both federal and state law are insufficient.

104. Phila., Pa., Code § 10-2001-4 (2021).

105. Phila., Pa., Code § 10-2002 (2021).

106. Phila., Pa., Code § 10-2001-2 (2021).

107. David Hernandez, *San Diego bans firearm parts without serial numbers to combat ghost guns*, SAN DIEGO UNION TRIB. (Aug. 2, 2021), <https://www.sandiegouniontribune.com/news/public-safety/story/2021-08-02/san-diego-bans-untraceable-gun-parts-firearms>.

108. Chris Gros, *Mayor Gloria signs ban on ghost guns in San Diego*, CBS8 (Sept. 23, 2021), <https://www.cbs8.com/article/news/local/mayor-gloria-signs-ban-on-ghost-guns-in-san-diego/509-ddd5f49d-29dc-42a6-8f2c-41f17381718f#:~:text=The%20ban%20prohibits%20the%20possession,serialized%20firearms%20within%20San%20Diego>.

109. San Diego, Ca., Code § 53.18 (2021).

PART III: HOW CAN PROSECUTORS COMBAT THE RISE OF GHOST GUNS?

Federal legislation is too unlikely an option on which to rely. Federal regulation is too unstable an option on which to rely. State legislation, so far, is too weak of an option on which to rely. And local legislation is too rare an option. However, there is one key player in the criminal legal system who *can* take immediate and significant steps to combat the rise of ghost gun violence: prosecutors.

Prosecutors hold a disproportionate amount of power in the area of criminal justice reform.¹¹⁰ While scholars may debate the merits of this reality,¹¹¹ I seek merely to propose policies that prosecutors ought to adopt immediately in order to address the rising specter of ghost gun violence. In other words, my aim is not to challenge the fundamental structure of the criminal legal system. Instead, because of the power prosecutors wield and given the sheer scope and violent nature of this problem, I suggest that prosecutors have an obligation to do everything they can to address the issue on multiple fronts. They can achieve this through three primary avenues: internal reform, external lobbying, and civil litigation.

Internal Reform

Prosecutors must first turn to internal reforms. Perhaps unsurprisingly, the first tool a prosecutor should use to combat ghost gun violence is traditional prosecution. This may take the form of prosecuting those who commit serious violent crimes with ghost guns or prosecuting those who supply communities with ghost guns in the first place.

There has been some success with federal prosecution, despite the restrictive ATF definition. For instance, in June 2021, a defendant found with ghost guns in the District of Maryland plead guilty to, among other things, possession of a firearm.¹¹² Law enforcement officers

110. *See, e.g.*, EMILY BAZELON, CHARGED xxv (2019).

111. *See, e.g.*, Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 759 (2018) (“Reforms should disrupt the power imbalance between the prosecutors and prosecuted because a criminal legal system that operates as a racial caste system is illegitimate.”).

112. *See Felon Pleads Guilty to Possession of Ghost Guns and Conspiracy to Commit Wire Fraud*, U.S. DEP’T OF JUST., U.S.A.O. D. MD. (June 28, 2021),

seized two ghost guns from this defendant and charged him with felon in possession of a firearm because he was previously convicted of a crime punishable by more than a year of imprisonment.¹¹³ Arguably, this prosecution was only possible because of the strength of the case itself, exemplified by the numerous other charges and inculpatory evidence in the Government's favor. However, it still serves as an example of how ghost gun prosecution, in some instances, may be possible. The prosecution itself helps to combat the rise of ghost guns because it may deter others from purchasing ghost guns¹¹⁴ and, more immediately, removes ghost guns from society through law enforcement seizure.

State offices should also use traditional prosecution to combat ghost gun violence. For instance, in August 2021, the Manhattan district attorney indicted two defendants for assembling eight guns from parts they ordered online.¹¹⁵ In states where mere possession of a ghost gun is legal, prosecutors have gotten creative in the charges they can still bring against defendants who commit violence with ghost guns. The State's Attorney in Jacksonville, Florida stated that in cases where her office cannot make a case on the actual shooting, they target the shooters in other ways such as illegal possession of a firearm if they are convicted felons.¹¹⁶ They have also brought novel charges against shooters who are not legally entitled to possess a firearm for showing off their guns on social media platforms.¹¹⁷

Additionally, they do not just prosecute individuals who use or possess a firearm but, more importantly, the traffickers, unlicensed dealers, and purchasers who provide ghost guns for the criminal

<https://www.justice.gov/usao-md/pr/felon-pleads-guilty-possession-ghost-guns-and-conspiracy-commit-wire-fraud>.

113. *See id.*

114. *See generally*, MINN. H. RSCH. DEP'T, DO CRIMINAL LAWS DETER CRIME? DETERRENCE THEORY IN CRIMINAL JUSTICE POLICY: A PRIMER (Jan. 2019) (discussing how legislators can use deterrence theory to shape criminal justice policy). On the other hand, drug crime may serve as an example of why imprisoning individuals for criminal behavior rather than addressing the root cause of that behavior can have adverse consequences and not help reduce the rate of that crime. *See More Imprisonment Does Not Reduce State Drug Problems*, PEW CHARITABLE TRS (Mar. 2018).

115. *See* Bromwich, *supra* note 54.

116. *See* Stoika, *supra* note 47.

117. *See id.*

market.¹¹⁸ Of course, the most direct avenue to address ghost gun violence is to drastically reduce or altogether eliminate the number of ghost guns. In part, this can be achieved by prosecuting and seizing the guns of those who illegally supply communities with ghost guns.

Beyond traditional prosecution, the second internal reform a prosecutor's office should adopt to combat ghost gun violence is to design specific units to tackle this problem. For instance, the Jacksonville State's Attorney created a "Targeted Prosecution Division"—a unit designed to focus on the drivers of violent crime.¹¹⁹ The prosecutors in this division are embedded with local law enforcement officers in order to share information and develop the strongest case possible for prosecution.¹²⁰ Additionally, that office incorporated technology into tracking and prosecuting violent crime.¹²¹ They use ballistics evaluations in a unique way; rather than wait months for a lab to develop a potential match from a casing to a gun—which doesn't help track untraceable ghost guns anyway—they use the ballistics evidence as a lead generator to track how and where a crime gun is travelling.¹²² These units help to address the issue because they help predict ghost gun violence, leading to a reduction of overall violence, and prosecute, helping deter others from possessing and perpetuating violence with a ghost gun.

Developing internal units to prosecute ghost gun violence and creatively using existing legislation to combat ghost gun violence are two solutions, but without a clear interpretation of the law either by the judiciary or executive branches, it is a risky strategy because prosecutors cannot build as strong of a case against a defendant. Therefore, state attorney generals should also clarify the meaning of state laws to include the regulation of ghost guns. In many states, attorney generals have the power to clarify existing law through legal opinions.¹²³ Thus, they can guarantee that law enforcement should treat

118. *See id.*

119. *See Stoika, supra* note 47.

120. *See id.*

121. In other words, this office uses ballistics evidence to link the ghost gun to each crime scene at which it is used, generating predications about where it might be used next. *See id.*

122. *See id.*

123. *See Untraceable: The Rising Specter of Ghost Guns, supra* note 6.

unfinished receivers as firearms.¹²⁴ In other words, at least in their state, attorney generals can avoid the issue that federal prosecutors faced as a result of ATF's antiquated definition of a firearm. For instance, the Pennsylvania Attorney General published a legal opinion clarifying that unfinished receivers are "receivers," effectively informing law enforcement to treat ghost gun kits as firearms.¹²⁵

External Lobbying

Apart from internal reform, elected prosecutors must also lobby for change outside their office. Several prosecutors successfully urged the Biden administration to adopt the ATF's proposed rule.¹²⁶ Manhattan District Attorney, Cy Vance, and New York State Attorney General, Leticia James, publicly did so, calling on Biden to close the ATF's "ghost gun loophole."¹²⁷ Prosecutors should also lobby for federal legislation that either outright bans ghost guns¹²⁸ or overrules the ATF's interpretation of "firearms," assuming an anti-gun control Administration replaces President Biden's rule.¹²⁹

On the state level, prosecutors should lobby for legislation that would allow them to prosecute more rigorously those who commit violence with ghost guns. The ideal ghost gun legislation would include five parts. First, it would require 3D-printed guns and unfinished receivers to be serialized, effectively banning untraceable guns.¹³⁰ Second, it would prohibit the unregulated distribution of computer codes that contain templates for 3D-printed guns; for instance, it would only allow for the purchase of this code after the completion of a background check.¹³¹ Third, it would require all firearms to be detectable by metal detectors.¹³² Fourth, it would require the completion

124. *See id.*

125. *See id.*

126. *See Summary of Final Rule 2021R-05F, supra* note 99.

127. Bromwich, *supra* note 54.

128. *See Ghost Guns Are Guns Act, supra* note 77; *see also Untraceable Firearms Act, supra* note 78; *Untraceable Firearms Act, supra* note 79; *Stop the Manufacture of Ghost Guns Act, supra* note 80.

129. *See Untraceable: The Rising Specter of Ghost Guns, supra* note 6.

130. *See Ghost Guns, supra* note 24.

131. *See id.*

132. *See id.*

of a background check before purchase or transfer of an unfinished receiver.¹³³ Lastly, it would only allow for licensed manufacturers to assemble 3D-printed guns.¹³⁴ In states that have no current laws regarding ghost guns, prosecutors can lobby for the enactment of this model legislation. In states that already have ghost gun legislation, prosecutors can lobby for stricter legislation that more closely aligns with these five guidelines. This legislation is essential to closing the ghost gun loophole and reducing the sheer number of ghost guns available to the public.

Civil Litigation

On top of the internal reform and external lobbying, a prosecutor's office has a final tool to combat ghost gun violence: civil litigation. This is a relatively new technique, so whether it will successfully reduce the supply of ghost guns has yet to be tested. However, several local prosecutors and state attorney generals have used this method. For instance, San Francisco District Attorney Chesa Boudin filed a civil lawsuit against three ghost gun manufacturers in August 2021, claiming the manufacturers do not comply with firearms sales regulations.¹³⁵ Boudin noted that “[t]raditional law enforcement approaches to gun safety are not working,” so preventing the manufacture of ghost gun kits is an alternative strategy to reduce future violence.¹³⁶ Alvin Bragg, the recently-elected Manhattan District Attorney, declared his support of Boudin's method and noted that his office would pursue similar strategies.¹³⁷

State attorney generals have also used this method to combat ghost gun violence. For instance, in New Jersey, the Attorney General sued a seller of unserialized AR-15 ghost gun kits for failing to warn customers that ghost guns are illegal in the state.¹³⁸ Additionally, the New York Attorney General distributed cease-and-desist letters to ghost

133. *See id.*

134. *See id.*

135. *See* Henry Lee, *San Francisco District Attorney sues ghost gun makers*, KTVU (Aug. 18, 2021), <https://www.ktvu.com/news/sf-da-boudin-sues-ghost-gun-makers>.

136. Bromwich, *supra* note 54.

137. *See id.*

138. *See Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6.

gun companies offering ghost gun kits in violation of state law.¹³⁹ If effective, this strategy would pre-emptively cut off the supply of illegal ghost guns rather than prosecuting individuals who have already committed crime.

CONCLUSION

The United States faces a rapidly growing problem of ghost gun violence, and prosecutors must be part of the solution to address it. Currently, the legal landscape to combat this issue is dire. Federal legislation only regulates “firearms” and whether a ghost gun is included in that definition is a decision that each presidential administration makes, suggesting it’s an unstable option for the future. Only eleven states directly address ghost gun regulation, many of which limit that regulation to a specific type of ghost gun. Local ordinances may be helping in small pockets of the country, but given the rarity of them, it’s not enough to address this encroaching, violent problem.

Thus, prosecutors, given all their power to affect change in the criminal legal system, must uniformly use that power to stop the spread of this new frontier of untraceable ghost gun violence. Through internal reforms, external lobbying, and civil litigation, prosecutors may be able to stop the rising tide of ghost guns and prevent future instances of unthinkable tragedy like in the case of Nathaniel Berhow who easily purchased a gun online and later walked onto his high school campus, killing two others and himself.

To be clear, the only difference between a legally defined “firearm” and a ghost gun is just that: a legal definition. Like with other firearms, ghost guns ought to be regulated and treated as dangerous, lethal weapons. In no safe society should 15-year old Nathaniel Berhow have been able to purchase a gun. Whether or not the law defines that ghost gun as a “firearm,” he used it to kill two teenagers and injure three more. While the weapons may be legally distinct, the victims are not. Ghost guns will continue to plague communities without swift and significant action from all stakeholders, including prosecutors.

139. *See id.*

Appendix A: State Legislation

California

California has strict ghost gun legislation. They require any assembled firearm to be serialized.¹⁴⁰ A person must apply for a unique serial mark from the California Department of Justice prior to assembling a ghost gun kit or upon moving into California with an already assembled one.¹⁴¹ Then, they must affix the serial number to the firearm.¹⁴² Further, the state prohibits the sale or transfer of these firearms.¹⁴³ Additionally, self-assembled firearms must comply with California's Unsafe Handgun Act, specifying safety precautions that must be taken.¹⁴⁴ The legislation also addresses 3-D printed ghost guns. It requires them to be engraved with a serialized piece of metal large enough for a metal detector to detect it.¹⁴⁵ Moreover, individuals and companies are prohibited from knowingly assisting in the assembly of a firearm by those not legally entitled to possess them under state law.¹⁴⁶ Lastly, in 2019, the state expanded the law, requiring all sales of firearm parts — including ghost gun kits — to occur through a licensed vendor and completion of a background check before purchase.¹⁴⁷ Online sellers, as well, would have to deliver the parts to a licensed vendor and meet those requirements before transferring them to the purchaser.¹⁴⁸ In 2020, the state passed another law expediting the effective date for these new requirements, moving it from July 2025 to July 2022.¹⁴⁹

New York

Currently, New York has less stringent ghost gun legislation, but the state legislature has proposed two additional bills that would

140. CAL. PENAL CODE § 29180 (West 2021); *see generally Untraceable: The Rising Specter of Ghost Guns, supra* note 6 (summarizing state ghost gun legislation).

141. CAL. PENAL CODE § 29180

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*; *see generally Ghost Guns, supra* note 24.

146. CAL. PENAL CODE § 29180 *supra* note 141.

147. *Id.*; *see also Untraceable: The Rising Specter of Ghost Guns, supra* note 6..

148. *See Untraceable: The Rising Specter of Ghost Guns, supra* note 6.

149. *See Ghost Guns, supra* note 24.

strengthen the protections. As of now, New York’s legislation only pertains to undetectable guns, not all ghost guns. The state bans the possession, transport, and manufacture of undetectable firearms.¹⁵⁰ While this helps state prosecutors bring charges against the possession of 3-D printed guns, it does not help with the traceability problem of ghost guns or do anything to criminalize or regulate ghost gun kits. However, in June 2021, the New York State Legislature passed two bills that would directly address these issues.¹⁵¹ The Unfinished Receivers Act defines an “unfinished receiver” and makes possession of one illegal; it also bans the possession of the major parts of a firearm by those not legally entitled to possess a firearm and makes it illegal to sell an unfinished receiver to anyone but a licensed gunsmith.¹⁵² The Untraceable Firearms Act defines a “ghost gun” as any unserialized and unregistered firearm and makes possession of them illegal by anyone but a licensed gunsmith; it entirely bans the sale of ghost guns and assembly of a firearm by anyone but a licensed gun smith.¹⁵³ Lastly, it requires all gunsmiths to serialize and register all firearms and unfinished receivers they manufacture or assemble.¹⁵⁴ The bills have not yet been signed by Governor Kathy Hochul, but a spokeswoman for her office signaled that the governor intends to review the legislation.¹⁵⁵

Washington, D.C.

D.C., arguably, has the most strict ghost gun legislation. Unlike most other states, D.C. does more than define a “firearm;” they define a “ghost gun” itself, leaving no room for interpretation as to whether an unfinished receiver is regulated by the statutes.¹⁵⁶ A ghost gun, in D.C., includes all 3-D printed guns — “any firearm that, after the removal of all parts other than a receiver, is not detectable” by metal detectors —

150. N.Y. PENAL LAW § 265.50 (McKinney 2021).

151. *See* Bromwich, *supra* note 54.

152. *See* Anna M. Kaplan, *Eliminating Ghost Guns*, NEW YORK STATE SENATOR, OFFICE OF ANNA M. KAPLAN (June 8, 2021), <https://www.nysenate.gov/newsroom/press-releases/anna-m-kaplan/new-york-state-legislature-passes-nations-toughest>.

153. *See id.*

154. *See id.*

155. *See* Bromwich, *supra* note 54.

156. D.C. CODE § 7-2501.01(9B) (West 2021); *see generally* *Ghost Guns*, *supra* note 24 (summarizing ghost gun legislation in D.C.).

and all unfinished frames or receivers¹⁵⁷ —any “frame or receiver of a firearm that is not yet a component part of a firearm, but which may...be readily made into an operable frame or receiver through milling, drilling, or other means.”¹⁵⁸ D.C. prohibits the registration of any ghost gun which, in effect, bans the possession of ghost guns because all guns must be registered before possession is legal.¹⁵⁹ Further, D.C. bans the sale and transfer of all ghost guns with few exceptions such as surrendering the gun to law enforcement or removing it from the city.¹⁶⁰

While gun control advocates applaud D.C.’s efforts to ban ghost guns, pro-gun organizations have already filed litigation challenging the constitutionality of these recent laws.¹⁶¹ In fact, Heller — the same plaintiff from the famous *D.C. v. Heller* decision — and two other gun-owning residents filed a lawsuit in September arguing the new laws are overly broad because they outlaw *all* guns made with polymer — not just privately-made, 3-D printed ones — such as Glock’s top-selling handgun, the gun issued to most D.C. law enforcement officers.¹⁶² Notably, the legislation does make an exception for law enforcement officers, though the plaintiffs do not argue that in their lawsuit.¹⁶³ In part, the plaintiffs argue that removing “all parts other than the receiver” only leaves the polymer frame, so D.C. has, in effect, made all polymer frame handguns illegal.¹⁶⁴ Further, they argue that the definition of an unfinished receiver is unconstitutionally vague and that the problem with ghost gun kits would be better addressed by requiring the serialization, registration, and background checks of ghost guns rather than an all-out prohibition of them.¹⁶⁵ The D.C. Attorney General’s Office — the elected prosecutor for D.C. — has not remarked on this specific lawsuit, but it has repeated that it will “continue to do everything in [its] power to combat gun violence and improve public safety, including defending the District’s common-sense gun laws in

157. D.C. CODE § 7-2501.01(9B) (West 2021).

158. D.C. CODE § 7-2501.01(17B)(A) (West 2021).

159. D.C. CODE § 7-2502.02(a)(8) (West 2021).

160. D.C. CODE § 7-2505.01 (West 2021).

161. *See* Tom Jackman, *supra* note 23.

162. *See id.*

163. *See id.*

164. *Id.*

165. *See id.*

court.”¹⁶⁶ For now, D.C.’s ghost gun legislation effectively arms prosecutors with the ability to punish those who possess and sell ghost guns, but this legislation could be ruled unconstitutional.

Connecticut

In 2019, Connecticut also passed ghost gun legislation.¹⁶⁷ The new law built off of previous gun legislation, repealing and substituting with more specific legislation addressing ghost guns.¹⁶⁸ Now, the state bans the manufacture of firearms without receiving a serial number from the state’s Department of Emergency Services and Public Protection.¹⁶⁹ The serial number which must be affixed to the firearm is issued after the agency completes a background check.¹⁷⁰ The state also requires a background check before the purchase of an unfinished receiver and generally prohibits the sale or transfer of such receivers that do not have serial numbers attached.¹⁷¹ Further, those not legally entitled to possess firearms may not possess unfinished receivers either.¹⁷² Lastly, the state also bans undetectable guns made of polymer.¹⁷³

Hawaii

Hawaii enacted ghost gun legislation in 2020, further clarifying the legislation in 2021.¹⁷⁴ The legislature revised the statute because those possessing ghost guns claimed they didn’t violate the law due to the fact that they acquired the parts used to assemble the firearm prior to the statute’s effective date.¹⁷⁵ The current statute bans unlicensed

166. *Id.*

167. *See Governor Lamont Signs Laws Banning Ghost Guns and Strengthening Firearm Storage in Motor Vehicles*, State of Connecticut, Office of Governor Ned Lamont, <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2019/06-2019/Governor-Lamont-Signs-Laws-Banning-Ghost-Guns-and-Strengthening-Firearm-Storage-in-Motor-Vehicles> (June 7, 2019).

168. 2019 Conn. Legis. Serv. P.A. No. 19-6 (West).

169. CONN. GEN. STAT. ANN. § 29-36b (West 2021)..

170. *Id.*; *see generally Untraceable: The Rising Specter of Ghost Guns*, *supra* note 6 (summarizing Connecticut’s ghost gun legislation).

171. N.J. Stat. Ann. § 2:39-9(k),(m) (West 2021).

172. *Id.*

173. *Id.*

174. *See Ghost Guns*, *supra* note 24.

175. *See id.*

individuals from purchasing, producing with a 3-D printer, or obtaining separately, or as part of a kit a) an unfinished receiver without a serial number, b) an unfinished receiver that has not been provided a serial number that can be registered by a licensed gun dealer, or c) any combination of parts where an unserialized firearm can be readily assembled.¹⁷⁶ The legislation also requires 3-D printed ghost guns to be serialized.¹⁷⁷ Further, it requires dealers to register and serialize firearms before they are assembled via a kit or 3-D printer or sold, unassembled, to a purchaser.¹⁷⁸ Finally, licensed dealers must treat the sale or transfer of an unfinished receiver as if it were a functioning firearm, requiring a background check and licensing requirements.¹⁷⁹

Massachusetts

Currently, Massachusetts has relatively weak ghost gun legislation. The state only bans the sale, transfer, or possession of undetectable guns.¹⁸⁰ However, there are two proposed bills that more thoroughly address ghost guns; both have moved to the Ways and Means Committee.¹⁸¹ The House bill would require those who wish to assemble a firearm to obtain a serial number and affix it to the firearm.¹⁸² It would also ban the manufacture or assembly of any polymer plastic firearm.¹⁸³ The Senate bill, similarly, would require the manufacture or assembly of a weapon to include serialization and registration.¹⁸⁴ It would also prohibit 3-D printed firearms.¹⁸⁵

New Jersey

New Jersey also has ghost gun legislation. That state prohibits manufacturing a firearm without a manufacturing license; it also bans purchasing an unserialized frame.¹⁸⁶ With regard to 3-D printed ghost

176. HAW. REV. STAT. ANN. § 134-10.2 (West 2021).

177. *Id.*

178. *Id.*

179. *Id.*

180. MASS. GEN. LAWS ANN. ch. 140, § 131N (West 2021).

181. H. 3843, 191st Gen. Ct. (Mass. 2019); S. 2649, 191st Gen. Ct. (Mass. 2020).

182. H. 3843, 191st Gen. Ct. (Mass. 2019).

183. *Id.*

184. S. 2649, 191st Gen. Ct. (Mass. 2020).

185. *Id.*

186. N.J. STAT. ANN. § 2:39-9(k),(m) (West 2021).

guns, the state bans the manufacture and sale of them.¹⁸⁷ Further, the state broadly prohibits the use of a 3-D printed to manufacture a firearm and criminalizes the distribution of electronic 3-D printing instructions.¹⁸⁸ In 2019, New Jersey strengthened these laws, criminalizing the knowing possession, sale, or manufacture of any unserialized firearm.¹⁸⁹

Rhode Island

In 2020, Rhode Island passed comprehensive ghost gun legislation, including strict definitions accompanying the statutory provisions.¹⁹⁰ First, in Rhode Island, a “firearm” now explicitly includes the frame or receiver of a weapon from which “metal projectiles are propelled, or that may readily be converted to expel a projectile.”¹⁹¹ Additionally, the legislation defines a “ghost gun”: a firearm, including the frame, “that lacks a unique serial number.”¹⁹² The bill also defines a “3D printing process” as the manufacturing of a 3-D object from a computer file¹⁹³ and, broadly, defines an “undetectable firearm” as a firearm that is, among others things, not detectable by a metal detector after removal of all but the major components *or* manufactured by a 3-D printing process.¹⁹⁴ Based on these definitions, the new bill prohibits the manufacture, sale, and possession of a ghost gun, undetectable firearm, or any firearm made by a 3-D printing process.¹⁹⁵

Virginia

Virginia has limited ghost gun regulation, pertaining to only 3-D printed guns. The state prohibits the manufacture, sale, or possession of a “plastic firearm” — a firearm containing less than 3.7 ounces of detectable metal.¹⁹⁶ The narrow scope of this legislation does not address any of the problems associated with ghost gun kits. In 2021, the

187. N.J. STAT. ANN. § 2:39-9(l) (West 2021).

188. *Id.*

189. N.J. STAT. ANN. § 2:39-9(n) (West 2021).

190. H.B. 7102, 2020 Leg., Gen. Assemb. (R.I. 2020).

191. 1956 R.I. GEN. LAWS ANN. § 11-47-2(6) (West 2021).

192. 1956 R.I. GEN. LAWS ANN. § 11-47-2(8) (West 2021).

193. 1956 R.I. GEN. LAWS ANN. § 11-47-2(1) (West 2021).

194. 1956 R.I. GEN. LAWS ANN. § 11-47-2(18) (West 2021).

195. 1956 R.I. GEN. LAWS ANN. § 11-47-8(e) (West 2021).

196. VA. CODE ANN. § 18.2-308.5 (West 2021).

Virginia General Assembly attempted to pass new legislation that would also ban the manufacture, sale, and possession of unfinished frames and unserialized firearms.¹⁹⁷ However, the bill failed to garner enough votes, an effort applauded by the NRA.¹⁹⁸

Washington

Unlike Virginia, the state of Washington passed strict ghost gun legislation in 2019. First, it defines “undetectable” and “untraceable” guns.¹⁹⁹ The former is any firearm will less than 3.7 ounces of stainless steel, detectable by walking through metal detectors.²⁰⁰ The latter is any unserialized firearm manufactured after July 1, 2019.²⁰¹ Based on these definitions, the state prohibits the manufacture, sale, and possession of any undetectable gun or part designed for use in an undetectable gun; it also bans the assembly or repair of an undetectable gun.²⁰² Further, the law criminalizes the manufacture of an untraceable firearm “with the intent to sell the untraceable firearm.”²⁰³ This provision, notably, does not ban the mere possession of an untraceable firearm. However, the law prohibits assisting a person who is prohibited from firearm possession from acquiring an undetectable or untraceable firearm.²⁰⁴ Lastly, the state may seize any illegally held or illegally possessed undetectable firearm.²⁰⁵

Nevada

Lastly, in 2021, Nevada passed comprehensive ghost gun legislation. Effective January 1, 2022, the state, first, prohibits the possession of an unfinished frame or receiver unless possessed by a firearms manufacturer or importer.²⁰⁶ Second, it bans the sale or transfer of an unfinished frame unless the seller and purchaser are both

197. H.B. 2276, 2021 1st Spec. Sess. (Va. 2021)

198. See *Virginia: “Ghost Gun” Bill Dead, General Assembly Adjourns Sine Die*, NRA-ILA (March 1, 2021), <https://www.nraila.org/articles/20210301/virginia-ghost-gun-bill-dead-general-assembly-adjourns-sine-die>.

199. WASH. REV. CODE. ANN. § 9.41.010 (West 2021).

200. WASH. REV. CODE. ANN. § 9.41.010(33) (West 2021).

201. WASH. REV. CODE. ANN. § 9.41.010(35) (West 2021).

202. WASH. REV. CODE. ANN. § 9.41.190(1) (West 2021).

203. *Id.*

204. WASH. REV. CODE. ANN. § 9.41.325 (West 2021).

205. WASH. REV. CODE. ANN. § 9.41.220 (West 2021).

206. A.B. 286, 81st Leg. Reg. Sess. (West 2021).

manufacturers or importers; however, both of those actions are legal if the unfinished frame is serialized.²⁰⁷ More broadly, the state bans the manufacture, assembly, sale, and possession of unserialized firearms.²⁰⁸

207. *Id.*

208. *Id.*