



Pennsylvania Attorney General Josh Shapiro

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Introduction

Chairman Blumenthal, Ranking Member Cruz, and members of the Senate Judiciary Committee’s Subcommittee on the Constitution, I am Josh Shapiro, Attorney General for the Commonwealth of Pennsylvania. Thank you for inviting me to testify today about the rising threat of untraceable ghost guns in our communities.

When it comes to firearms, there are many priorities that everyone can agree on, including: stopping gun trafficking; keeping guns out of the hands of prohibited purchasers; and reducing the devastating impact of gun violence in our communities. If we work together, we can achieve these goals while upholding our citizens’ constitutional rights. And, as this committee has correctly identified, eliminating ghost guns is one of the most sensible, straightforward actions we can take.

There are several different types of ghost guns, with the common trait being that they are all impossible for law enforcement to trace because they lack serial numbers or other unique identifiers. One example, which will be covered in more detail by my fellow panelists, is 3D-printed guns. Today, I’ll be speaking primarily about “80 percent receivers.”

80 Percent Receivers

A gun’s receiver is the part of the gun that houses or connects all of the other parts of the gun, such as the firing mechanism. It’s analogous to a bicycle frame, which serves as the primary hub for the wheels, handlebars, gears, and pedals. Under federal law, the receiver is the regulated component of the gun; in other words, it is the firearm. You can swap out slides, magazines, or any other part, but if they’re attached to the same receiver, then it’s considered the same gun. That’s why federal law requires that a gun’s serial number be stamped on the receiver.

So-called 80 percent receivers derive their name from the fact that they are less than 100 percent complete because they are not fully milled out—although in practice they are often far more than 80 percent of the way to a functioning receiver. After purchase, all it takes is some simple drilling and manipulation before the receiver can properly house all of the other components. And often the receivers come with clear directions, or even a jig to guide where to drill.

Put simply, 80 percent receivers are DIY, build-your-own gun kits. These firearms are often sold in kits with all of the tools and instructions needed to turn them into fully-operational firearms. And while it may sound complicated to build a gun, in reality it doesn’t take any special skills, tools, or expertise to convert one of these kits. In fact, the average person could buy an 80 percent receiver in the morning, build it over the course of an afternoon with tools they purchased from their local hardware store, and be ready to fire by that evening.

Until recently, hobbyists purchased the vast majority of 80 percent receivers sold, with the overwhelming majority of purchasers well within their rights to own firearms. But as law enforcement has closed off other firearm trafficking pipelines and

technological innovations made 80 percent receivers easier to build, criminals started exploiting a massive loophole in the system.

ATF's interpretation allows 80 percent receiver kits to be sold online and at gun shows throughout the country without background checks and without serial numbers. And courts have relied on these regulations in their rulings, making it harder for law enforcement to appropriately regulate them. The ultimate outcome of these regulations has been to undermine Congress's objectives when it passed the Gun Control Act (GCA). It also undermines states like Pennsylvania that have passed common-sense gun laws to implement and strengthen the goals of the GCA, only to see those laws similarly circumvented by 80 percent receivers. That means that today, 80 percent receivers aren't just being sold one at a time to hobbyists; they're being sold by the box or by the bag to people who are often prohibited purchasers, then completed in home factories and resold on the black market.

Impact on Communities

This is not a hypothetical problem. Ghost guns are quickly becoming a weapon of choice for criminals and fueling the gun violence epidemic. Take Philadelphia, for example. In 2018, about 13 ghost guns were recovered by law enforcement there while investigating criminal activity; in 2019, that was up to 99; last year saw 250 ghost guns recovered; and this year we're on pace to recover over 600 in just that one city. The consequences are deadly. In one tragic example, a 25-year-old former Temple University football player was killed last year with a ghost gun by someone who was a prohibited purchaser, and therefore never should have been allowed to have a gun.

This isn't just a Philadelphia problem: we're seeing these in communities all across our Commonwealth, from Pittsburgh to Punxsutawney to Reading. In fact, the problem is nationwide. As Chief Harrison knows, Baltimore saw 126 ghost gun recoveries in 2020, a 400 percent increase over the prior year. Los Angeles had 600 in 2020, of which at least 231 were used in serious or violent crimes such as murder, attempted murder, kidnapping, and carjacking. And right here in D.C., 306 ghost guns were recovered last year alone. And to be clear, this is just the number that law enforcement has collected and identified—there are certainly far more out there in the hands of those who shouldn't have them.

Regardless of ideology or political parties, whether you're in law enforcement or a member of the communities hardest-hit by gun violence, we can all agree that criminals and other prohibited purchasers should not be allowed to buy and build a DIY gun. I want to be clear: I am not advocating for a ban on 80 percent receivers. All that I and my colleagues across law enforcement ask is that these DIY gun kits be subject to the same background checks and qualifications as fully-functioning firearms to prevent criminals who are not legally able to purchase or possess guns from getting their hands on these deadly, untraceable weapons.

Actions Taken

The rapid acceleration of ghost guns being used in crimes in Pennsylvania communities demands action. That's why, in 2019, I issued a binding legal opinion¹ stating that under Pennsylvania law these 80 percent receivers must be treated the same as any fully-manufactured firearm. The language in our statute is clear: a product is a "firearm" if it is "designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of such any such weapon." This text, which mirrors similar definitions found in federal law, makes it clear than an 80 percent receiver is a firearm because it is by its very nature designed, intended, and readily converted to be able to fire projectiles.

Based on the threat these DIY gun kits pose to public safety in communities across Pennsylvania, I have made cracking down on illegal ghost guns a key enforcement priority of my agency. One of our earliest cases demonstrates the brazenness with which criminals are able to circumvent the system and get ahold of these weapons. In 2019, our agents were surveilling a gun show in York, Pennsylvania. There, they witnessed a prohibited purchaser buy an 80 percent receiver kit. He then took it to another table, where a convicted felon (and neo-Nazi) drilled out the receiver, assembled the gun, and handed it to him. Had our agents not happened to be watching, we would have had no way to stop it.

In another case from this past October, our agents watched a company at a different gun show sell 90 of these kits in one batch to a convicted felon for \$38,000 in cash. The convicted felon then openly carried the boxes full of these firearms out to his truck. A search of his home turned up even more firearms, completed 80 percent kits, loads of ammunition, large sums of cash, and what amounts to a home-based factory for converting 80 percent receivers into fully-functioning firearms. Again, had we not been there that day, dozens more of these guns would be on our streets today.

In March, agents working a gun show in Morgantown, Pennsylvania, where they observed two men purchasing large numbers of 80 percent receivers. As it turns out, these men were running a ghost gun trafficking operation out of their homes in Philadelphia, over an hour's drive away. In total, our agents seized five fully assembled ghost guns, four 80 percent receiver kits, one 80 percent receiver, a revolver, extended magazines, and more than 1,000 rounds of ammunition.

Last month, our agents executed a search warrant on a couple in Northampton, Pennsylvania. There, they discovered 21.5 pounds of crystal methamphetamine with a street value of nearly a million dollars, 1,275 doses of fentanyl, six fully assembled ghost guns, three 80 percent receivers, four assault rifles, three handguns, and various ghost gun parts, along with drug and Nazi paraphernalia.

¹ <https://www.attorneygeneral.gov/wp-content/uploads/2019/12/19.12.16-Receivers-Legal-Opinion.pdf>

And just last week, my office worked with the ATF to bring down two men from Lehigh County, Pennsylvania who straw purchased and trafficked 29 firearms, including at least one 80 percent receiver.

There's a common theme with all of these 80 percent receiver transactions: they're all happening in cash, in part because both the buyer and the seller want to avoid records of these transactions, for obvious reasons.

For all of our operational successes, we simply don't have the resources to keep up with the sheer volume of illegal ghost guns flowing into our communities. The only way is to cut them off at the source.

The danger is recognized across the political spectrum. Responsible gun owners agree that prohibited purchasers shouldn't be able to circumvent the law with 80 percent receivers. Gun safety advocates agree. And even gun show promoters agree.

Gun shows are one of the most prolific sources of 80 percent receivers, but the people who operate gun shows don't want to be a part of criminal activity any more than you or I do. That's why I was proud to work with one of the largest gun show promoters in Pennsylvania who decided to voluntarily stop selling ghost guns at his shows until 80 percent receiver kits are subject to background checks. Prior to that agreement, that promoter estimates that they sold more than 6,000 kits at their shows. Granted, this action by one gun promoter won't end the threat of ghost guns. Even if every gun show promoter agreed to do the same, these products are still sold online. But it's a major step in the right direction.

I want to stress that this promoter was under no threat of legal action whatsoever by my office. We didn't sue, and we didn't threaten to sue; we simply worked together to come up with a solution to the problem. It speaks volumes that the promoter was willing to put his own reputation and profits on the line because he saw just how many of these guns were getting into the hands of dangerous people. His action was applauded not just by gun safety advocates like Everytown, but also by gun rights advocates like Firearms Owners Against Crime and even other sellers at the gun shows.

Forthcoming ATF rules

Some of my colleagues, including District of Columbia Attorney General Karl Racine, have also taken similar steps to try to stop the illegal flow of 80 percent receivers in their jurisdictions, and I applaud them for their efforts. But while states can close this loophole within our own borders, we need federal action to institute a nationwide solution; even when states try to close this loophole, 80 percent receivers can still be readily purchased online, or trafficked into our states from other jurisdictions. Additionally, many states rely on ATF's interpretation of federal law for their enforcement actions, and our ability to use the ATF's National Instant Criminal Background Check System (NICS) for 80 percent receivers depends on ATF recognizing treating products the same as any other firearm.

ATF has been a critical partner in our firearm trafficking enforcement efforts. They work with us on individual cases, and in particular have done incredible work helping us expand sharing of crime gun data among law enforcement agencies. But we need ATF to act on ghost guns. That's why my colleagues in law enforcement and I have called on ATF's leadership to update their regulations. The lack of action has hamstrung not just state and local law enforcement, but even their own agents.

When he came into office in January, President Biden had no shortage of crises and urgent issues on his plate. I'm grateful that he recognized the urgency of the gun violence crisis in our communities and directed the ATF to address this issue through revised regulations. And just last Friday, that promise was met when ATF released its proposed regulations. I speak for many in law enforcement when I say that these regulations would be a leap forward to permanently closing the loophole on ghost guns and, I applaud Attorney General Garland for following through and taking action.

However, even if these proposed regulations are adopted, that does not eliminate the need for this body to pursue a legislative solution. Chairman Blumenthal, last year you joined with many of your colleagues, including Senators Feinstein, Whitehouse, and Pennsylvania's own Bob Casey, to propose the Untraceable Firearms Act of 2020. I thank you for your work on this issue, because this type of common-sense legislation, which I believe can and should be bipartisan, is necessary to clarify the law and ensure that ATF and law enforcement agencies across the United States are bound to treat ghost guns as what they are under the law: firearms.

Conclusion

Federal action would help ATF, our offices, and our colleagues in federal, state, and local law enforcement agencies across the country to combat the rise of ghost guns in our communities. Until then, we are fighting gun trafficking with one arm tied behind our backs. To be clear, such a change need not in any way restrict the rights of lawful gun owners to purchase 80 percent receivers and assemble firearms on their own. It would simply require that these products have serial numbers and that purchasers undergo basic background checks—just like they currently do for other firearm purchases. This is an area of gun policy where we should actually be able to have cooperation; we cannot let this emerging threat go unchecked because of other disagreements people may have in gun safety debate.

Thank you, Chairman Blumenthal, Ranking Member Cruz, and all the members of this Committee for holding this hearing and highlighting the issue of untraceable ghost guns. This is a top priority for my office and I appreciate your focus on it. I look forward to answering any questions you may have.