

## Commentary for Firearm-Theft/Loss Reporting Model Legislation

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Every year, thousands of firearms are lost or stolen from vehicles, businesses, and private homes. The prompt reporting of lost and stolen firearms allows law enforcement to develop investigative leads and to identify recurring patterns that might indicate the involvement of illicit firearms traffickers. Accordingly, Federal Firearms Licensees (such as gun stores and manufacturers) must report the theft or loss of any firearm from their inventory to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to appropriate local law enforcement agencies within 48 hours of learning that a loss or theft has occurred.

The model legislation below provides a framework for states to consider as they determine whether and how to craft laws requiring that all persons, firms, and corporations similarly report the loss or theft of any firearm they own to the appropriate state, local, Tribal, or territorial law-enforcement agency. This model legislation draws upon the firearm-loss and -theft reporting statutes that have been adopted in at least 15 states and the District of Columbia, and is designed to identify the main features (and varying specifics) of these statutes.

The Department is not endorsing any particular formulation of a firearm-loss and -theft reporting statute. Rather, this model legislation identifies key provisions that may be important to help ensure fair, effective, and safe implementation of such a law; and identifies options for states to consider as they legislate in this area. In drafting its own legislation, each state must account for its own policy, legal, administrative, and operational considerations and requirements.

The provisions of the model legislation are as follows:

### **SEC. 1. REPORTING LOST AND STOLEN FIREARMS**

Section 1 provides a statutory framework mandating reporting of the loss or theft of a firearm. Section 1 first sets forth when the reporting requirement is triggered and provides a timeline for filing a report with the appropriate law-enforcement agency specified by the state implementing the model legislation. States that have firearm-loss and -theft reporting statutes vary as to whether actual or constructive knowledge of the loss or theft is sufficient to trigger the reporting requirement, with several states (*e.g.*, Colorado[i], Delaware[ii], and the District of Columbia[iii]) adopting an actual-knowledge trigger and at least two states (Connecticut[iv] and Oregon[v]) imposing the same requirements on persons with constructive knowledge. The states also employ a range of time frames for reporting after the requirement is triggered, from “immediately” (District of Columbia[vi]) to seven days after discovery of the loss or theft (Delaware[vii]). For purposes of clarity and ease of enforcement, the model legislation requires reporting no later than 48 hours after the owner of the firearm obtains actual *or* constructive knowledge of the loss or theft.

Section 1 further provides a list of identifying information that must be included in the report to the law-enforcement agency, including the caliber, make, model, manufacturer, and serial number of the firearm, as well as any other distinguishing numbers or identifying marks. At least two states (Colorado[viii] and Hawaii[ix]) have included similar requirements in their statutes.

Section 1 further provides that any law-enforcement agency that receives such a report shall provide the reporting person, firm, or corporation with written confirmation of receipt.

## **SEC. 2. REPORTING RECOVERY OF LOST OR STOLEN FIREARMS**

Section 2 requires any person, firm, or corporation that reports the loss or theft of their firearm, pursuant to Section 1, to notify the same law-enforcement agency if they later recover their lost or stolen firearm. At least two states (Colorado[x] and Massachusetts[xi]) have adopted similar reporting requirements.

## **SEC. 3. EXCEPTION TO REPORTING REQUIREMENT**

Section 3 excuses a failure to comply with the reporting requirements set forth in Sections 1 and 2 when the person, firm, or corporation that would otherwise be required to file a report is physically incapable of doing so or when a designee of that person, firm, or corporation files a report on their behalf. At least two states (Hawaii[xii] and Illinois[xiii]) have included similar exceptions in their firearm-loss and -theft reporting statutes.

## **SEC. 4. NATIONAL CRIME INFORMATION CENTER**

Section 4 would require law-enforcement agencies that receive reports under Sections 1 or 2 to upload the reported information into the National Crime Information Center (NCIC) database. At least three states (Hawaii[xiv], Maryland[xv], and Virginia[xvi]) impose a similar requirement on their state and local law-enforcement agencies.

## **SEC. 5. WRITTEN WARNINGS AT POINT OF SALE**

Section 5 would require those engaged in the retail sale of firearms to warn purchasers that failure to report the loss or theft of a firearm could result in imprisonment or a fine. Section 5 further provides for appropriate penalties, as determined by the state implementing the model legislation, for the failure to provide this notification.

## **SEC. 6. PENALTIES FOR VIOLATIONS**

Section 6 provides for appropriate penalties, as determined by the state implementing the model legislation, for failure to comply with the reporting requirements set forth in Sections 1 and 2. At least six states impose civil penalties for failure to comply with their firearm-loss and -theft reporting statutes (Colorado[xvii], Delaware[xviii], District of Columbia[xix], Michigan[xx]; New Jersey[xxi], Virginia[xxii]); at least three states classify violations as criminal misdemeanors (Connecticut[xxiii], Hawaii[xxiv], Ohio[xxv]); and one state has a hybrid statute, where the first violation constitutes a civil infraction and the second violation constitutes a criminal misdemeanor (Maryland[xxvi]). Section 6 further provides for appropriate penalties, as determined by the state implementing the model legislation, for filing reports containing information that the filer knows to be materially false (*see, e.g.*, Hawaii[xxvii], Oregon[xxviii]).

Finally, two states have imposed civil liability for damages caused through the use of an unreported lost or stolen firearm in certain circumstances. New Jersey[xxix], which generally provides that owners of “assault firearms” (as defined under state law) are civilly liable for damages when their weapon is used in the commission of a crime, provides an exception to such liability in the case of firearms that are promptly reported as stolen. Oregon[xxx] provides that the failure to report a lost or stolen firearm as required by state law constitutes negligence per se

in any resulting damages action by a party injured through the use of that firearm. Given the lack of consensus among the states on this question, the model legislation does not include a provision imposing liability for damages caused through the use of an unreported lost or stolen firearm. However, states should consider whether such a provision may be consistent with their general civil-liability principles and policy objectives.

- [i] Colo. Rev. Stat. § 18-12-113(1)(a)(I)
- [ii] Del. Code tit. 11, § 1461(a)
- [iii] D.C. Code § 7-2502.08(a)(1)
- [iv] Conn. Gen. Stat. § 53-202g(a)
- [v] Or. Rev. Stat. § 166.397(1)(a)
- [vi] D.C. Code § 7-2502.08(a)(1)
- [vii] Del. Code tit. 11, § 1461(a)
- [viii] Colo. Rev. Stat. § 18-12-113
- [ix] Haw. Rev. Stat. § 134-29(b)
- [x] Colo. Rev. Stat. § 18-12-113(1)(b)
- [xi] Mass. Gen. Laws ch. 140, § 129C
- [xii] Haw. Rev. Stat. § 134-29(h)
- [xiii] 720 Ill. Comp. Stat. 5/24-4.1(c)
- [xiv] Haw. Rev. Stat. § 134-29(c)
- [xv] Md. Code, Pub. Safety § 5-146(c)
- [xvi] Va. Code. § 18.2-287.5(A)
- [xvii] Colo. Rev. § 18-12-113(2)
- [xviii] Del. Code tit. 11, § 1461(b)
- [xix] D.C. Code § 7-2502.08(e)
- [xx] Mich. Comp. Laws § 28.430(2)
- [xxi] N.J. Stat. § 2C:58-19
- [xxii] Va. Code § 18.2-287.5(B)
- [xxiii] Conn. Gen. Stat. § 53-202g(b)
- [xxiv] Haw. Rev. Stat. § 134-29(d)
- [xxv] Ohio Rev. Code § 2923.20(C)
- [xxvi] Md. Code, Pub. Safety § 5-146. 2013(d)
- [xxvii] Haw. Rev. Stat. § 134-29(g)
- [xxviii] Or. Rev. Stat. § 166.397(2)(c)
- [xxix] N.J. Stat. § 2C:58-12(g)
- [xxx] Or. Rev. Stat. § 166.397(3)

## **FIREARM-THEFT/LOSS REPORTING MODEL LEGISLATION**

### **SEC. 1. REPORTING LOST AND STOLEN FIREARMS**

(a) **REPORTING REQUIREMENT.**—Any person, firm, or corporation that owns a firearm shall report any loss or theft of the firearm, no later than 48 hours after the person, firm, or corporation knew or reasonably should have known of the loss or theft, to the [appropriate law-enforcement agency specified by state law] having jurisdiction over the location where the loss or theft of the firearm occurred, if that location is known; or to the [appropriate law-enforcement agency specified by state law] having jurisdiction over the location where the person resides or the firm or corporation has its principal place of business, if the location where the loss or theft of the firearm occurred is not known.

(b) **CONTENTS OF REPORT.**—The report of a lost or stolen firearm pursuant to subsection (a) shall include the following, to the extent known by the person, firm, or corporation filing the report:

- (1) The caliber of the firearm;
- (2) The make of the firearm;
- (3) The model of the firearm;
- (4) The manufacturer of the firearm;
- (5) The serial number of the firearm;
- (6) Any other distinguishing number or identification mark on the firearm; and
- (7) Any additional relevant information required by the law-enforcement agency receiving the report.

(c) **CONFIRMATION OF REPORT.**—Any law-enforcement agency to which a person, firm, or corporation reports the loss or theft of a firearm pursuant to subsection (a) of this section shall provide the individual reporting the loss or theft with written confirmation of receipt of the report.

### **SEC. 2. REPORTING RECOVERY OF LOST OR STOLEN FIREARMS**

(a) **REPORTING REQUIREMENT.**—Any person, firm, or corporation that previously reported a lost or stolen firearm pursuant to Section 1 and that subsequently recovers the firearm, shall, no later than seven days after the person, firm, or corporation recovers the firearm, report to the law-enforcement agency to which the Section 1 report was made that the firearm identified in the Section 1 report has been recovered.

(b) **CONFIRMATION OF REPORT.**— Any law-enforcement agency to which a person, firm, or corporation reports the recovery of a firearm pursuant to subsection (a) of this section shall provide the person, firm, or corporation reporting the recovery with written confirmation of receipt of the report.

### **SEC. 3. EXCEPTION TO REPORTING REQUIREMENT**

A person, firm, or corporation shall not be in violation of Section 1 or Section 2 if the person, firm, or corporation establishes that:

(1) the failure to report was due to a long-term closure or inaccessibility of each law-enforcement agency to which the report should have been directed, such as an interruption of operations during a natural disaster, and the report was made as soon as reasonably possible;

(2) the firearm was owned by a natural person, rather than a firm or corporation, and that person was hospitalized, comatose, or otherwise seriously physically or mentally impaired so as to prevent the individual from reporting, and the report was made as soon as reasonably possible; or

(3) the designee of the person, firm, or corporation made a report within the required timeframe.

#### **SEC. 4. NATIONAL CRIME INFORMATION CENTER**

Any law-enforcement agency that receives a report pursuant to Section 1 or Section 2 shall enter the reported information into the National Crime Information Center database.

#### **SEC. 5. WRITTEN WARNINGS AT POINT OF SALE**

(a) Each person, firm, or corporation that engages in the retail sale of any firearm, at the time of sale of such firearm, shall provide to the purchaser thereof a written copy of Section 1 and Section 2 and a written warning that shall state in block letters not less than one inch in height: "FAILURE TO REPORT A LOST OR STOLEN FIREARM MAY RESULT IN [appropriate penalties specified by state law]."

(b) Each such person, firm, or corporation shall conspicuously post and, at all times, display the warning specified in subsection (a) of this section in block letters not less than three inches in height.

(c) Any person, firm, or corporation that violates any provision of Section 5 shall be subject to [appropriate penalties specified by state law].

#### **SEC. 6. PENALTIES FOR VIOLATIONS**

(a) Any person, firm, or corporation that fails to file a report, in violation of Section 1 or Section 2, shall be subject to [appropriate penalties specified by state law].

(b) Any person, firm, or corporation that files a report under Section 1 or Section 2 containing material information that the filer knows to be false shall be subject to [appropriate penalties specified by state law].