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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2023-04

TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Matthew J. Platkin, Attorney General

DATE: August 23, 2023

SUBJECT: **Guidance and Notification Requirement Relating to Strict Liability for Death or Injury Resulting from a Firearm-Trafficking Violation, Pursuant to L. 2023, c. __.**

Effective today, the Legislature passed and Governor Murphy enacted the Real Accountability for Consequences of Unlawful Trafficking of Firearms Act (the "Act"), L. 2023, c. __ (S. 3150 (2022)), providing law enforcement with a tool to hold persons who illegally traffic in firearms accountable for the harm those firearms ultimately cause. Under the Act, any person who illegally traffics a firearm may be held strictly liable when that firearm is later used in the course of committing a crime causing death, serious bodily injury, or significant bodily injury within three years of the initial trafficking act.

This Directive provides guidance to prosecutors and police officers to ensure that the Act is enforced uniformly and effectively throughout the State. To further those goals, it requires that agencies obtain the prior approval of the Director of the Division of Criminal Justice, or their designee, before charging an offense under the Act.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law-enforcement officer of the State to secure the benefits of uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law-enforcement agencies¹ to follow the guidance and notification requirements outlined in this Directive.

¹ Law-enforcement agency includes all law enforcement agencies created by the governing municipal body and promulgated by statute, including municipal police departments, county law-enforcement agencies, state law-enforcement agencies, and part-time municipal police.

I. Guidance Regarding L. 2023, c.

Under the Real Accountability for Consequences of Unlawful Trafficking of Firearms Act, L. 2023, c. ___, a person who purposely commits a “firearm trafficking violation” shall be strictly liable for any death, serious bodily injury, or significant bodily injury resulting from use of the illegally trafficked firearm in the course of committing a crime. The Act establishes a crime of the first degree in cases where use of the firearm results in death, and a crime of the second degree in all other cases.

As defined in the Act, a “firearm trafficking violation” means a violation of:

- (1) N.J.S.A. 2C:39-10(a)(1) by selling, giving, transferring, assigning, or otherwise disposing of a handgun to a person who the defendant knows is not a licensed dealer or has not secured a permit to purchase a handgun pursuant N.J.S.A. 2C:58-3(a);
- (2) N.J.S.A. 2C:39-10(a)(1) by selling, giving, transferring, assigning, or otherwise disposing of a rifle or shotgun to a person who the defendant knows is not a licensed dealer or does not have a valid firearms purchaser identification card and has not complied with the requirements of N.J.S.A. 2C:58-3(b)(1);
- (3) N.J.S.A. 2C:39-10(a)(4) by selling or transferring a firearm that the recipient intends to sell, transfer, assign, or otherwise of to another person who is prohibited from possessing a firearm under State or federal law;
- (4) N.J.S.A. 2C:39-9(i) by transporting, shipping, or otherwise bringing into New Jersey, or conspiring to do so, any firearm for the purpose of unlawfully selling, giving, transferring, assigning, or otherwise disposing of that firearm to another person;
- (5) N.J.S.A. 2C:39-10(e) by selling, giving, transferring, assigning, or otherwise disposing of a firearm to a person who is under the age of 18, except as permitted by N.J.S.A. 2C:58-6.1; or
- (6) Enumerated federal firearms statutes:²
 - 18 U.S.C. § 922(a) by importing, manufacturing, or dealing firearms without license; transporting or receiving firearms across state lines; transporting destructive device, machinegun, short-barreled shotgun or rifle; transferring, selling, trading, giving, transporting, or delivering firearm to out-of-state resident; straw purchases; manufacturing or importing armor-piercing ammunition; selling or delivering armor-piercing ammunition; or receiving firearm by out-of-state resident;

² Given the complex nature of federal firearms laws, prosecutors should familiarize themselves with statutes enumerated in paragraph (6) to confirm whether any apply prior to issuing any charges arising from a death or injury where the firearm that caused the death or injury may have been acquired by way of a firearm-trafficking violation under the Act. The summaries provided are for ease of reference only and should not be exclusively relied upon.

- 18 U.S.C. § 922(b) by unlawfully selling to minor; selling in violation of state law; selling to person who does not reside in state; selling destructive device, machinegun, short-barreled shotgun or rifle; or selling firearm or armor-piercing ammunition without required records;
- 18 U.S.C. § 922(c) by unlawfully selling firearm to someone who does not appear in person;
- 18 U.S.C. § 922(d) by selling or disposing of firearm to prohibited person;
- 18 U.S.C. § 922(h) by receiving, possessing, or transporting firearm or ammunition as an employee of a person prohibited from shipping, transporting, possessing, or receiving any firearm or ammunition under subsection (g), in the course of such employment;
- 18 U.S.C. § 922(i) by transporting or shipping stolen firearms or ammunition;
- 18 U.S.C. § 922(j) by receiving, possessing, concealing, bartering, selling, or otherwise disposing of a stolen firearm or ammunition;
- 18 U.S.C. § 922(n) by shipping, transporting, or receipt of a firearm or ammunition as a person under indictment for a crime punishable by over one year in prison;
- 18 U.S.C. § 922(u) by unlawfully taking a firearm from a licensed firearm importer, manufacturer, or dealer;
- 18 U.S.C. § 922(x) by transferring a handgun or handgun ammunition to a juvenile, or possessing a handgun or handgun as a juvenile; or
- 18 U.S.C. § 924(a)(1) by making a false statement in connection with a firearms transaction.

When a person traffics a firearm in violation of any one of the enumerated provisions, that person may be held strictly liable for any death or serious or significant bodily injury caused by that firearm when it is later used in a crime. The person need not have intended or contemplated that the weapon would be used in a crime or that death or injury would result from its use. It is also irrelevant to the person's culpability that the firearm was transferred again before being used in a crime. It is, however, necessary that the harm involved resulted from the firearm's use in a criminal act. It is also necessary that the harm took place not more than three years from the firearms-trafficking offense.

Moreover, the Act expressly permits the trier of fact to infer that a defendant has the requisite mental state to commit a firearm trafficking violation under certain circumstances. Specifically, this inference may be made if the defendant (1) transferred or planned to transfer the firearm within forty-five days of their own purchase and receipt of the firearm; (2) sold the other

person three or more firearms within a one-year period; (3) received compensation for the firearm that was significantly above the fair market value; (4) did not conduct the transaction through a licensed retail dealer; or (5) did not abide by the requirements of N.J.S.A. 2C:58-3(a)(3) or (b)(3) to complete a National Instant Criminal Background Check and did not provide a receipt or other documentation of the sale.

Of note, under certain circumstances, a person who illegally traffics a firearm outside of New Jersey may be held criminally liable under the Act for harm caused by that firearm in the State. Indeed, the Act specifically provides that a defendant's out-of-state conduct is "sufficient for prosecution if the defendant knew or should have known that the recipient of the firearm intended to possess, transfer, dispose, sell, or otherwise transport the firearm in this State." Conversely, under certain circumstances, a person who illegally traffics a firearm within New Jersey may be held criminally liable under the Act for harm caused by that firearm in another State, as the Act provides that it is not a defense that the death or injury took place in another jurisdiction.

The extra-territorial scope of the Act is critical both to protecting New Jersey residents from firearms illegally trafficked into the State from elsewhere, and to protecting the community from the illegal trafficking of firearms within the State. The determination of whether a person may be criminally liable under the Act for their out-of-state conduct or the out-of-state result of their in-state conduct involves a fact-sensitive analysis. In performing that analysis, it is critical for prosecutors and police to consider not only the Act, but also its relationship to the territorial jurisdiction provisions of N.J.S.A. 2C:1-3.

II. Notification Requirement

To ensure that the Act is enforced uniformly and effectively throughout the State, any law enforcement agency seeking to charge a violation of the Act must first obtain the written approval of the Director of the Division of Criminal Justice, or their designee, by notifying the respective County Prosecutor's Office, which must then seek the requested approval from the Division of Criminal Justice.

Nothing in this directive shall be understood to require prior approval of any other charges that may arise in these cases, such as homicide or aggravated assault charges connected with the criminal use of a trafficked firearm.

III. Other Provisions

- A. Non-enforceability by third parties.** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.

C. Questions. Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.

D. Effective date. This Directive shall take effect immediately, and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. All law enforcement agencies are encouraged to take any action it deems necessary related to training on this Directive.



Matthew J. Platkin
Attorney General

ATTEST:



Lyndsay V. Ruotolo
First Assistant Attorney General

Dated: August 23, 2023