



Frequently Asked Questions About the “Charleston Loophole”

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This fact sheet will be periodically updated to account for new policy developments. It was last updated on February 10, 2021. [Click here](#) to view other fact sheets in this series.

What is the “Charleston loophole?”

In the vast majority of cases, when an individual seeks to buy a gun and submits to a background check, the National Instant Criminal Background Checks System (NICS) returns a definitive result within a matter of minutes, indicating whether the buyer is legally eligible to buy a gun.¹ However, in a small number of cases, the system is unable to make an immediate determination as to whether a prospective buyer is eligible to buy a gun. Under current federal law, the FBI has three business days to continue to investigate. If after three days, the FBI has not concluded the investigation, the gun seller has the discretion to proceed with the sale, despite the lack of an affirmative finding that the individual is eligible to buy a firearm. These sales are called “default proceed” sales.²

The default proceed sale process has become known as the Charleston loophole. This loophole was how the shooter who committed a horrific hate crime in 2015 at the Emanuel AME Church in Charleston, South Carolina, obtained his firearm. The shooter’s criminal history made him ineligible to buy a firearm, but a problem with his records in NICS resulted in a delay in resolving the background check within three business days. The dealer sold the gun through a default proceed transaction, and two months later, the shooter used that gun to murder nine worshippers attending Bible study at the historic African American church.³

Why are default proceed gun sales a problem?

Allowing gun sales to proceed without a completed background check enables individuals who are prohibited from gun possession—such as the Charleston shooter—to evade the law and buy guns. This is not a hypothetical risk. In 2018, 4,240 background checks were denied nationwide after the three-day investigation period elapsed. In at least 3,960 of those cases, a gun was sold to the prohibited buyer at the discretion of the dealer, requiring officers of the Bureau of Alcohol, Tobacco, Firearms and Explosives to attempt to retrieve these guns from individuals with a potentially dangerous criminal history.⁴

The risk that prohibited purchasers will be able to buy guns through default proceed transactions is particularly acute in the context of domestic violence. Under current federal law, individuals who have been convicted of a misdemeanor crime of domestic violence or are subject to a domestic violence restraining order are barred from buying guns. There are often challenges in determining whether a particular conviction or restraining order in a domestic violence case qualifies as gun prohibiting, which can often lead to delays in resolving background checks in these cases. As a result, a disproportionate number of default proceed cases and subsequent firearm retrievals occur in the context of a buyer who was prohibited due to domestic violence. In 2018, 22 percent of the cases in which a gun was transferred to a prohibited purchaser through a default proceed transaction involved someone prohibited due to a misdemeanor conviction of domestic violence or a domestic violence restraining order, totaling more than 850 guns.⁵

To address this gap, nine states have passed legislation extending the time period a firearm dealer must wait before transferring a gun to a purchaser if a background check has not yet been completed.⁶ Additionally, some states remedy concerns over default proceeds by using licensing and registration laws to provide law enforcement with additional time to conduct background checks on potential gun owners.⁷ More recently, the Gov. Gina M. Raimondo (D-RI) declared an emergency extension of Rhode Island's background check window, temporarily prohibiting gun dealers from transferring firearms to purchasers until a background check has cleared or 30 days have elapsed.⁸

How has a surge in gun sales during the COVID-19 pandemic highlighted this dangerous loophole?

With the onset of the COVID-19 pandemic and subsequent closures and lockdowns, Americans began purchasing firearms at an unprecedented rate in 2020. Nearly 2 million guns were sold in the month of March alone,⁹ and by the end of 2020, Americans had exceeded the highest number of gun purchases in a single year with 23 million firearms sold.¹⁰ The drastic surge in gun purchasing during the pandemic put unprecedented strain on an already under-resourced background check system,¹¹ and municipal office and court closures during the pandemic have prevented NICS examiners from having timely access to essential court documents.¹² This has led to significant delays in background check turnarounds and an increased risk of firearms erroneously sold to prohibited purchasers through a default proceed sale. An analysis by Everytown for Gun Safety found that an estimated 35,000 potential default proceed sales occurred in the month of March alone, with at least 523 of these guns going to prohibited persons and nearly 25 percent going to individuals with domestic violence prohibitors.¹³ The Charleston loophole turned what should have been a simple administrative inconvenience during the pandemic into a potential public health emergency.

How should Congress address the Charleston loophole?

At a minimum, Congress should amend the law to give the FBI additional time to complete a background check investigation before a default proceed sale may be permitted. However, to fully eliminate the risk of default proceed sales, Congress should eliminate default proceed sales entirely and require a completed background check before a gun sale can proceed.

Endnotes

- 1 FBI Criminal Justice Information Services Division, "National Instant Criminal Background Check System (NICS) 2017," available at <https://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view> (last accessed February 2021).
- 2 Office of the Inspector General, "Audit of the Handling of Firearm Purchase Denials Through the National Instant Criminal Background Check System (2016)," available at <https://oig.justice.gov/reports/2016/a1632.pdf> (last accessed February 2021).
- 3 Michael S. Schmidt, "Background Check Flaw Let Dylan Roof Buy Gun, F.B.I. Says," *The New York Times*, July 10, 2015, available at <https://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html>.
- 4 FBI Criminal Justice Information Services Division, "National Instant Criminal Background Check System (NICS) 2018," available at <https://www.fbi.gov/file-repository/2018-nics-operations-report.pdf/view> (last accessed February 2021).
- 5 Ibid.
- 6 Giffords Law Center to Prevent Gun Violence, "Background Check Procedures," available at <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/background-check-procedures/> (last accessed February 2021).
- 7 Ibid.
- 8 State of Rhode Island and Providence Plantations, "Executive Order 20-07: Fifth Supplemental Emergency Declaration—Extension of Time For Weapon and Firearm Background Checks," March 20, 2020, available at <https://bit.ly/2V5SwiT>.
- 9 Keith Collins and David Yaffe-Bellany, "About 2 Million Guns Were Sold in the U.S. as Virus Fears Spread," *The New York Times*, April 1, 2020, available at <https://www.nytimes.com/interactive/2020/04/01/business/coronavirus-gun-sales.html>.
- 10 Small Arms Analytics, "U.S. firearm sales December 2020: Sales increases slowing down, year's total sales clock in at 23 million units," Press release, January 5, 2021, available at <http://smallarmsanalytics.com/v1/pr/2021-01-05.pdf>.
- 11 Ann Givens, "The Gun Background Check System Is Overburdened and Understaffed, DOJ Budget Request Shows," *The Trace*, March 21, 2018, available at <https://www.thetrace.org/2018/03/gun-background-check-staff-shortage-justice-department-budget>.
- 12 Chelsea Parsons and Rukmani Bhatia, "Dangerous Gaps in Gun Laws Exposed by the Coronavirus Gun Sale Surge" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/issues/guns-crime/reports/2020/07/08/486292/dangerous-gaps-gun-laws-exposed-coronavirus-gun-sale-surge/>; Debra Cassens Weiss, "A slew of federal and state courts suspend trials or close for coronavirus threat," *ABA JOURNAL*, March 18, 2020, available at <https://www.abajournal.com/news/article/a-slew-of-federal-and-state-courts-jump-on-the-bandwagon-suspending-trials-for-coronavirus-threat>; Greg Dubecky and Todd Feher, "How COVID-19 Court Closures Impact Your Background Checks," *HR Daily Advisor*, August 14, 2020, available at <https://hrdailyadvisor.blr.com/2020/08/14/how-covid-19-court-closures-impact-your-background-checks/>.
- 13 Everytown for Gun Safety, "How COVID-19 Has Made a Federal Background Check Loophole Even Deadlier" (New York: 2020), available at <https://everytownresearch.org/report/covid-default-proceed/>.