



H.R. 1446

The Enhanced Background Checks Act of 2021

INTRODUCED BY REP. JAMES CLYBURN (D-SC)

The [Enhanced Background Checks Act of 2021](#) addresses what is known as the “Charleston Loophole,” a gap in law that allowed a prohibited individual to purchase a firearm used to massacre nine parishioners at the Emanuel AME Church in Charleston, South Carolina. This legislation was introduced and passed by the U.S. House of Representatives as [H.R. 1112](#) in the 116th Congress with bipartisan support.

Every year, thousands of prohibited individuals are able to purchase firearms from federally licensed gun dealers (FFLs) because the law allows sales to *proceed by default* if the FBI is unable to complete a background check in fewer than 3 business days. H.R. 1446 addresses this gap in law by providing the FBI with additional time to complete background checks that are dispositive to prevent unlawful firearms transfers.

WHAT IS THE “CHARLESTON LOOPHOLE”?

When an FFL initiates a background check, the National Instant Criminal Background Check System (NICS) will return one of three possible replies: “proceed” (for checks with cleared backgrounds), “denied” (for checks with prohibiting records), or “delayed” (if there are flags in the background check that require further investigation). Pursuant to [18 USC § 922\(t\)\(B\)\(ii\)](#) of the Brady Handgun Violence Prevention Act, if a background check remains “delayed” three complete business days after the time the check was initiated (known as the Brady Transaction Period), the background check enters what is known within NICS as a “default proceed.” At this point an FFL may proceed with a firearms transfer at their discretion, a process commonly known today as the “Charleston loophole.”

On April 11, 2015, an avowed white supremacist and prohibited individual [attempted to purchase a .45 caliber handgun](#) in West Columbia, South Carolina. A background check was initiated, a potentially prohibiting record was identified, and a “delayed” disposition was sent to the dealer. On April 16, the fourth business day following the initiation of the background check, the FFL exercised their discretion and transferred the firearm. Weeks later, on June 17, this individual entered the Emanuel AME Church in Charleston, South Carolina, and joined a Bible study class for nearly an hour before brutally murdering nine parishioners with that firearm.

WHY IS THE “CHARLESTON LOOPHOLE” SO DANGEROUS?

Thousands of guns are sold each year through the Charleston loophole to individuals who are prohibited from possessing firearms, according to [FBI data](#). In 2017 alone, at least 1,245 people convicted of felonies, 973 unlawful users of controlled substances, and 511 persons under indictment [were able to obtain firearms](#) because of the three-day rule. In total, since 2008, over 43,000 prohibited purchasers have obtained [firearms](#) from FFLs through this process; in the last decade, an average of ten prohibited individuals *a day* have been able to purchase guns from FFLs.

Prohibited purchasers who obtain a firearm through the Charleston loophole are disproportionately likely to be [domestic abusers](#). In 2017, [23%](#) of the cases where a gun was transferred by an FFL to a purchaser prohibited were on the basis of a misdemeanor domestic violence conviction (MCDV) or a domestic violence restraining order. From 2006 through 2015, [nearly one-third](#) of denials involving misdemeanor crimes of domestic violence took longer than three business days, and during this same period over 6,000 firearms were transferred to persons with MCDV prohibitions due to the Charleston loophole.

The surge in gun sales in response to the coronavirus pandemic over the past year has placed an [enormous strain](#) on the already overburdened system, exacerbating the backlog of checks to be completed before the window expires. It is estimated that [double the average number](#) of background checks entered “default proceed,” and that nearly [6,000 firearms transfers to prohibited individuals](#) took place by mid-November 2020.

HOW WOULD H.R. 1446 ADDRESS THE PROBLEM?

Following the massacre in Charleston, the FBI’s Inspection Division conducted a [thorough review](#) of the NICS system and the circumstances that led to the gun being transferred to the shooter. While a series of missteps contributed in this case, the report both makes clear that the background check system is “complicated by statutory requirements” and suggests multiple times that the FBI should, “assess the possibility for legislative relief,” to fix these structural issues.

NICS operation procedures are necessarily geared toward expediency to fulfill their statutory obligations, with obvious and dangerous consequences. Performance reviews and the professional advancement of NICS investigators are based on speed and accuracy, but because firearms have likely been transferred after three business days — and because there are professional consequences for [inaccurately proceeding a transfer](#) — “this created an incentive for Delaying a questionable inquiry because little attention was paid to Delayed inquires, especially once exceeding the three day review

period.” The report also notes that the number of background checks not addressed by NICS until the third business day has been as high as 600 in a 24-hour period, leaving little to no time for external agencies to respond to a NICS request for essential information about a potential purchaser before guns can be transferred by default.

H.R. 1446 WOULD ADDRESS THIS PROBLEM BY PROVIDING NICS INVESTIGATORS MORE TIME TO COMPLETE BACKGROUND CHECKS THAT REQUIRE FURTHER INVESTIGATION:

- It increases the initial investigation period for background checks from three to ten business days.
- If the background check is still unresolved after ten business days, a purchaser may request an expedited review to spur the FBI to complete its investigation.
- After the request is submitted, the FBI would have ten additional business days to complete the background check before a sale can lawfully proceed.
- If the purchaser does not request an expedited review, the sale would not be allowed to proceed until the background check is completed.
- It would alter ATF regulations, allowing for gun transfers to proceed if the background check is completed more than 30 days after the check was initiated.

*H.R. 1446 **does not** create a waiting period for gun transfers. As soon as a background check is cleared, the firearm may be transferred.*

WHO WILL BE AFFECTED BY H.R. 1446?

According to [FBI data](#), nearly 90% of background checks are completed within minutes. However, approximately 3% of background checks require further investigation beyond three business days — only a few hundred thousand out of tens of millions each year. This legislation would help to block gun transfers to those barred by law from firearm possession, while no lawful purchaser would be denied the ability to obtain a firearm. It would also establish due process protections for firearm purchasers and prevent indefinite bureaucratic delays.

HOW DOES THIS LEGISLATION COMPARE TO PREVIOUS VERSIONS?

Prior to the 116th Congress, [legislation was introduced](#) that would completely close the Charleston loophole, preventing any transfer of a firearm unless a background check is complete. Recognizing that [hundreds of thousands of background checks](#) are not completed before the records are, by law, purged from NICS, this legislation is a bipartisan compromise that allows firearms transfers to move forward if purchasers’ background checks are (a) cleared during the expedited review period, or (b) if purchasers complete



the petition process without the FBI finding disqualifying information. H.R. 1446 addresses the Charleston loophole by providing the space and time for the FBI to fully investigate incomplete background checks.

CONCLUSION

H.R. 1446 will have a tremendous impact on public safety by preventing the transfer of firearms to prohibited individuals. By providing NICS with additional time to complete background checks, the system will be better able to focus its resources and efforts in order to provide accurate dispositions to federally licensed firearms dealers.