

# ***H.R. 1112***

## ***The Enhanced Background Checks Act of 2019***



The massacre at the Emanuel African Methodist Episcopal Church in Charleston, S.C. that killed nine innocent people, exposed an area of weakness in our federal gun laws, commonly referred to as the “Charleston loophole.”

The shooter at the AME Church in Charleston – who was prohibited by law from possessing a firearm – was able to acquire his gun before the FBI could complete his background check. Although the FBI needed more time to investigate the shooter’s disqualifying records to determine whether the purchase was lawful, federal law allowed the dealer to transfer the gun after three days even though the check was not completed.

Currently, federal law allows a “default proceed” whereby a federally licensed firearm dealer (FFL) can transfer a gun to a customer if the federal background check is not completed within 3 business days of the background check request to the National Instant Criminal Background Check System (NICS).

- The vast majority of background checks initiated to the National Instant Criminal Background Check System (NICS) result in an almost instant verdict.<sup>1</sup>
- While 96 percent of background checks are processed within 3 business days, hundreds of thousands will enter default proceed status every year.<sup>2</sup> That means hundreds of thousands of guns can be sold without completed background checks.

Though they account for a small percentage of overall sales, default proceed purchases can have deadly consequences, putting guns in the hands of convicted felons, domestic abusers, fugitives from justice, and other prohibited persons.

- Over 35,000 guns were transferred to prohibited purchasers between 2008 and 2017 because of the 3-day rule.<sup>3</sup>
- Default proceed sales are eight times more likely to involve a prohibited purchaser than other background checks.<sup>4</sup>
- According to a 2000 GAO report, an average of 25 business days elapse between an initial NICS inquiry and the date the system determined that the purchase should have been denied,<sup>5</sup> and while a 2016 GAO report confirms that technological and reporting enhancements have improved system efficiency over the years, thousands of prohibited purchasers are still not determined until after the 3-day period.<sup>6</sup>

## **H.R. 1112 - THE ENHANCED BACKGROUND CHECKS ACT OF 2019**



H.R. 1112 provides the background check system with additional time to make a final determination on a potential firearms purchaser before a licensed dealer can transfer a gun, while protecting the ability of lawful citizens to obtain timely results and avoid having purchases stalled indefinitely.

H.R. 1112 extends the initial background check review period from 3 to 10 business days. After the initial 10 business day period, if a background check has not been completed, a purchaser may request an expedited review to spur the FBI to complete their investigation. They may petition online or by mail, and must certify that they are not prohibited from purchasing or possessing a firearm. The FBI will have 10 additional business days from the date the petition was submitted to complete the background check before a sale could proceed under federal law. Those individuals who choose not to submit a certified petition will be required to wait until their background check is complete before a transfer can proceed.

Under current ATF regulation, an FFL may only rely on their initial contact to NICS for 30 calendar days, requiring purchasers to restart the process if their background check is incomplete or if they have not returned to the FFL to complete the firearms sale within that time. H.R. 1112 gives more flexibility to lawful gun purchasers by allowing them to complete a transfer for an additional 25 calendars after the determination by the system that the sale can proceed or they have completed the petition process, even if these requirements are met beyond the 30-day period.

This legislation will greatly reduce the amount of default proceed transfers to prohibited persons, protecting the public at large and the law enforcement officers who would be required to retrieve guns from dangerous people. Additionally, it provides an outlet for lawful firearms purchasers to complete a transaction without indefinite delay. It also provides a deterrent against unlawful purchasers through the certified petition process and puts the FBI and others who provide data to the system on notice that dispositions need to be finalized. It will ensure that our nation's strongest defense against guns falling into dangerous hands operates as intended and saves lives.

### **DOMESTIC ABUSE PATTERNS AND DEFAULT PROCEED**

Many denials remain outstanding after the 3-day default proceed period, and this is particularly true of domestic violence denials:

- From 2006 through 2015, 30 percent of background check denials involving records of misdemeanor crimes of domestic violence, took longer than three business days. 26 percent of those were returned within 20 business days. Had H.R. 1112 been law, it would have allowed the FBI and state agencies to deny at least 15,800 prohibited purchasers from getting guns on the basis of a domestic violence conviction before a gun could be transferred.<sup>7</sup>
- Over 6,000 firearms were transferred to persons convicted of misdemeanor domestic violence between 2006 and 2015 due to default proceed.
- Denial determinations for checks involving misdemeanor domestic violence records consistently take longer than checks involving other prohibiting records: from 2006 to 2015, the FBI was able to correctly determine 90 percent of felony denials within 3 days, but only 70 percent of misdemeanor domestic violence-

related checks. NICS required an additional 6 business days to achieve the 90 percent threshold in domestic violence cases.<sup>8</sup>



- In 2017, 23% of the cases where 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.<sup>9</sup>

## DEFAULT PROCEED ALLOWS OTHER PROHIBITED PURCHASERS TO OBTAIN GUNS IN LARGE NUMBERS

NICS screens for a wide variety of prohibiting factors that disqualify purchasers from obtaining firearms. In 2017 alone, at least 1,245 felons, 973 unlawful users of controlled substances, and 511 persons under indictment were able to purchase firearms because of the 3-day rule.<sup>10</sup>

While most background checks are processed in minutes, the thousands of denials that slip beyond the 3-day period present a public safety risk. Between 2006 and 2015, 10 percent of denials for most prohibited categories took longer than the 3-day period.<sup>11</sup> In addition to misdemeanor domestic violence crimes, investigators frequently need more time to look into cases that involve users of illicit substances, felony indictments, and those charged under state prohibitors. Between 2016 and 2017, over 9,500 prohibited purchasers were able to buy guns under the current default proceed rule.<sup>12</sup> Allowing NICS more time to complete background checks will prevent guns from falling into many dangerous hands.

## LAW ENFORCEMENT AT RISK

In addition to the public safety risk, the transfer of firearms to prohibited purchasers due to default proceed puts law enforcement in peril. Over 35,000 prohibited purchasers were able to access firearms between 2008 and 2017 because of the 3-day default proceed rule.<sup>13</sup> Each of these cases was referred to ATF or local law enforcement, which are charged with retrieving these firearms. The process of retrieval is both dangerous and time consuming, putting law enforcement lives at risk.<sup>14</sup> Extending the period of time for the system to complete a background check before a firearm is transferred is critical to the public's safety and to those charged with protecting it.

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  2. NICS Default Proceeds, 2014-2016, [https://docs.google.com/spreadsheets/d/1QsQgTqvU\\_9pUeMGSdZaSSAnA7eK82iafMnxGy-qpdXm/pubhtml](https://docs.google.com/spreadsheets/d/1QsQgTqvU_9pUeMGSdZaSSAnA7eK82iafMnxGy-qpdXm/pubhtml).
  3. FBI, National Instant Criminal Background Check System (NICS), <https://www.fbi.gov/services/cjis/nics>.
  4. Letter from U.S. Department of Justice, Federal Bureau of Investigation, to Michael R. Bloomberg, Regarding NICS background check procedures, [http://everytown.org/documents/2016/10/2008\\_10\\_21-fbi-letter.pdf](http://everytown.org/documents/2016/10/2008_10_21-fbi-letter.pdf).
  5. U.S. Government Accountability Office, "Gun Control: Implementation of the National Instant Criminal Background Check System," 2000, <http://www.gao.gov/new.items/g100064.pdf>.
  6. U.S. Government Accountability Office, "Gun Control: Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records," 2016, <https://www.gao.gov/assets/680/678204.pdf>.
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  8. *Id.*
  9. 2017 NICS Operations Report
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