

February 2, 2016

From: Jim Mischel
Sheridan (Family Farm in Perrydale / Ballston area) Oregon

To: House Judiciary Committee;

Rep. Jeff Barker, Chair
Rep. Ann Lininger, Vice-Chair
Rep. Andy Olson, Vice-Chair
Rep. Brent Barton
Rep. Mitch Greenlick
Rep. Wayne Krieger
Rep. Bill Post
Rep. Sherrie Sprenger
Rep. Jessica Vega Pederson

Dear Representatives,

I am emphatically against this bill. Please vote "no" on this bill.

RE: HB4147 The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits transfer of firearm by dealer or private party if Department of State Police is unable to determine whether recipient is qualified to receive firearm. Requires Department of State Police to notify appropriate law enforcement agency when, during criminal background check performed prior to transfer of firearm, department determines that recipient is prohibited from possessing firearm.

Is the legislature of the State of Oregon so incompetent that they can never "get it right"? Every legislative session we are addressing something someone sees as a critical loop hole. Anyone care to guess what the next "BIG Loop Hole" is? Perhaps the guessing game could be incorporated into a new game for the Oregon Lottery. Last year we had SB 941, The law that would "Close the BIG Loop Hole" and save the state. The democratic controlled legislature fought tooth and toenail to block, stop and impede any amendments to SB 941 because it was an excellent bill as written and needed no changes.

Enter 2016 and suddenly changes have to be made to the changes that SB941 made because there is *another* "BIG Loop Hole".

I am in complete opposition to this bill. This bill takes any safe guards off and the wait period now could be an indefinite period. It is a direct attack on the ability of a citizen of the State of Oregon, United States of America to legally purchase a firearm and runs afoul of both State and Federal Constitutions.

I firmly believe that the following amendment to ORS 166.412 (3)(b) (delete (3)(c); "(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information. **The dealer may not transfer the handgun unless the dealer receives a unique approval number from the department.**" is a violation of both the Oregon State Constitution and the Constitution of the

United States. You are denying a person their constitutional rights to purchase or own a firearm at the whim of a “no response” from the NICS.

So much for the “Instant Background Check System”. Now it is the instant “denial by default” system.

All the Government has to do is fail to respond or simply say “we need more time” and I or anyone else is permanently prevented from buying a firearm. There is no provision for appeal and the FBI is currently suspending the Federal Appeals process due to a “lack of funds”, (man power).

The stated reasons for this bill are as deceptive as you can get. Oregon and South Carolina laws are not the same. State Legislators, especially the chief sponsor is being completely deceptive in pointing out a “Loop Hole” that allowed Dylann Storm Roof to purchase a firearm. They want you to believe that had there been a longer period of time, Roof would not have obtained the firearm and that is simply not true, (addressed later). The amendments contained in this bill are potentially imposing a permanent ban to a person purchasing a firearm with no avenue of relief.

"South Carolina had the same policy we have in Oregon over selling a gun with an incomplete background check," said Williamson, who represents downtown Portland. "I decided this is a loophole we need to close."¹

Dylann Roof was arrested and charged **only with a misdemeanor** drug possession. He was not charged with a Felony. He had not been convicted of any crime at the time of purchase and most certainly not a felony. Even given more time, under the circumstances, he would most likely have been approved to purchase the firearm. It was not until **AFTER** the shooting in Charleston that a much more in depth investigation was conducted and the problems with arrest paperwork, jurisdictions and his lies on the ATF Form 4473. See attached FBI statement from FBI Director James Comey.

So the statement of Representative Williamson, “House Bill 4147, from House Majority Leader Jennifer Williamson, would clarify that gun purchasers whose background checks take longer than 72 hours won't be able to buy weapons by default. Instead, they would have to wait as long as it took for the Oregon State Police to complete the check.”¹ would appear to be highly suspect in this regard. Further exacerbated in that she apparently is unfamiliar with Oregon Law, *“If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, the dealer may deliver the handgun to the purchaser.”*

All of the above compounded by the reports of Victims family and survivors from out of state, Charleston, SC, being brought in to testify in Oregon in support of amendments to Oregon Law which really has no bearing on their State of South Carolina. Just more expense and theatrics.

¹ Denis C. Theriault | The Oregonian/OregonLive on January 30, 2016 at 7:04 AM, updated January 30, 2016 at 9:26 AM

If the sale had waited for the check to come back, the sale would have been denied because of a drug conviction.² This is blatantly false as supported by the records of S. Carolina listed below.

Dylann Roof purchased his firearm on April 11, 2015, in West Columbia S. Carolina. Misdemeanor arrest with no conviction had occurred on 03/02/15. It was not until 2 months after the firearms purchase that the June 17, 2015 shooting in Charleston South Carolina took place.

<http://cms.lex-co.com/SCJDWeb/PublicIndex/PIError.aspx?County=32&CourtAgency=32001&Casenum=2015A4021600503&CaseType=C&AspxAutoDetectCookieSupport=1>

<http://www.judicial.state.sc.us/cdr/searchCDRCode.cfm>

CDR Code: 179
Offense Description: Drugs / Poss. Of other controlled sub. In Sched. I to V – 1st offense
Offense Statute(s): [44-53-0370\(d\)\(2\)](#)
Penalty Statute(s): [44-53-0370\(d\)\(2\)](#)

Drug Schedule(s): [Schedule I](#) [Schedule II](#) [Schedule III](#) [Schedule IV](#) [Schedule V](#)
Offense Type: ***Misdemeanor***
Offense Class: Unclassified
Status: Active

Case Number:	2015A4021600503	Court Agency:	General Sessions	Filed Date:	03/16/2015
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	03/16/2015	Arrest Date:	03/02/2015
Law Enf. Case:		True Bill Date:	07/13/2015	No Bill Date:	
Prosecutor		Indictment	2015GS3201700	Waiver	

² Denis C. Theriault | The Oregonian/OregonLive on January 30, 2016 at 7:04 AM, updated January 30, 2016 at 9:26 AM

Case:		Number:		Date:	
Probation Case:					

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Fitzgerald, Brandon M	#1 Justice Square Columbia 29201				Officer		03/16/2015
Roof, Dylann Storm	10428 Garners Ferry Rd Columbia SC	White	M	1994	Defendant		03/16/2015

Name	Charge Code – Charge Description	Original Charge Code – Original Charge	Disposition Date
Roof, Dylann Storm	0179-Drugs / Poss. Of other controlled sub. In Sched. I to V – 1 st offense	0179-Drugs / Poss. Of other controlled sub. In Sched. I to V – 1 st offense	

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Roof, Dylann Storm	Indictment	Filing		07/13/2015-15:08		
Roof, Dylann Storm	Motion to Substitute Counsel	Motion		06/18/2015-16:05		
Roof, Dylann Storm	Request for Discovery	Filing		05/15/2015-12:31		
Roof, Dylann Storm	Filing/GS Case File	Filing		03/16/2015-10:14		

Case PartiesChargesSentencingAssociated CasesActionsFinancialsBonds

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
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Respectfully Submitted

Jim Mischel
Sheridan, Oregon

FBI Statement Attachment

Statement by FBI Director James Comey Regarding Dylann Roof Gun Purchase

Washington, D.C.
July 10, 2015

FBI National Press Office
(202) 324-3691

Director James Comey provided the following statement to reporters at FBI Headquarters on July 10, 2015:

I believe the job of the FBI Director is to be as transparent as possible with the American people, because we work for them. As you know, I try hard to explain our work to them, and I am also committed to explaining to them when we make a mistake and what I intend to do about it. I'm here today to talk to you about a mistake, in a matter of heartbreaking importance to all of us. Dylann Roof, the alleged killer of so many innocent people at the Emanuel AME church, should not have been allowed to purchase the gun he allegedly used that evening. Let me tell you what happened, as I understand it today.

As you know, the FBI, through our CJIS Division in West Virginia, administers part of the National Instant Criminal Background Check System, or NICS. We perform background checks in response to requests from gun dealers in about 30 states; the remainder of the states do their own.

South Carolina is one of the states for whom our West Virginia operation does background checks. South Carolina is where Dylann Roof purchased a gun in April 2015 that was later allegedly used in the mass murder in Charleston. And that's the transaction I want to talk to you about.

As you will recall, under federal law, a Federal Firearms Licensee must submit biographical information about a potential purchaser to NICS, and ***NICS has three business days*** to perform a background check and clear or deny the purchase. ***If the clear or deny decision has not been given in three business days, the FFL has the discretion to proceed with the transaction.*** Many large retailers exercise their discretion

not to proceed until given a clear “yes,” but many other retailers conclude the transaction after the three business days even in the absence of a clear decision, which is what the law allows.

I want to describe the particulars of the Roof gun purchase and background check, because Roof should not have been allowed to purchase the handgun. Here is what happened, as I understand it today:

On April 11, Roof attempted to purchase a handgun from a store in West Columbia, South Carolina, a near suburb of Columbia. That day was a Saturday. On the next business day, April 13, an examiner in our West Virginia facility was assigned the case and began to process it.

Her initial check of Roof’s criminal history showed that he had been arrested in South Carolina March 1 on a felony drug charge. This charge alone is not enough to deny proceeding with the transaction. As a result, this charge required further inquiry of two potential reasons to deny the transaction. First, the person could have been convicted of a felony since the arrest. Second, the underlying facts of the arrest could show the person to be an unlawful drug user or addict.

Some understanding of the geography is important to understanding what happened next. Most of the city of Columbia is in Richland County but a small piece of it crosses the line into Lexington County. The Columbia police arrested Dylann Roof on drug charges, in the small piece of the city of Columbia that lies within Lexington County. Importantly, as part of that arrest, the report by the Columbia police reflected that Roof admitted he was in possession of drugs. If a NICS examiner saw that, Roof would be denied permission to buy a gun. But the examiner never saw that. Here’s what happened, as best we understand it:

The NICS examiner studied Roof’s criminal history and saw that the arresting agency listed on his rap sheet was the Lexington County Sheriff’s Office. There was no mention of the Columbia police on the rap sheet. It is not clear why that happened, but it made a big difference in what happened next. The examiner followed our protocols and did three things:

First, she went on the website of the Lexington County court to see if the matter had been resolved.

Her review of the court website showed that Roof was a defendant there but there was not yet a disposition in the case, which meant he was not a convicted felon. She didn’t stop there.

Second, she faxed a request to the Lexington County Sheriff’s Office asking for more details on the case.

Third, she faxed a similar request to the Lexington County prosecutor’s office.

She heard back from the sheriff’s office, telling her that the case was not theirs, and that she should check with the Columbia Police Department.

Not knowing the geography, she did what she was supposed to do and followed our protocols. Examiners use contact sheets that list criminal justice organizations, organized by state and county. Because the arrest was attributed to the Lexington County sheriff, she was obviously dealing with Lexington County, so she pulled up the sheet for that county. As she examined it, she did not see a listing for a “Columbia,” but she did see a listing for “West Columbia.”

Informed by the fact that the gun had been bought in West Columbia and that it was the only listing on the sheet for such a name in Lexington County, she contacted the West Columbia police. They replied that they had no record of such a case.

The contact sheet for Lexington County did not list the Columbia police. Instead, Columbia PD was listed as a contact only on the sheet for Richland County. But the examiner never saw that sheet because she was focused on Lexington County.

So the court records showed no conviction yet and what she thought were the relevant agencies had no information or hadn't responded. While she processed the many, many other firearms purchases in her queue, the case remained in "delayed/pending."

By Thursday, April 16, the case was still listed as "status pending," so the gun dealer exercised its lawful discretion and transferred the gun to Dylann Roof.

After that horrific day when Roof allegedly used the gun in Charleston, the matter was obviously researched and the rap sheet confusion—listing the arresting agency as the Lexington County Sheriff—and the internal contact sheet omission were discovered. But the bottom line is clear: Dylann Roof should not have been able to legally buy that gun that day.

Those are the facts as we know them today. I have directed a full review of the matter by our Inspection Division and given them 30 days to report back to me. I will provide an update to you. I not only want to understand all the facts, but I want to know if there are ways to improve our process, our procedures, and our training. We are all sick that this has happened. We wish we could turn back time, because from this vantage point everything seems obvious, but we can't.

What we can do is make sure that we learn from it, get better, and work to ensure that we catch everything.

I want you to know that our folks in Charleston are meeting now to tell the families what we know and what we are going to do. All of us in the FBI, and across the entire nation, grieve for their unspeakable loss and want to do everything we can to help them find peace, strength, and healing.