

February 19, 2021

RE: Support for HB 2543

Chair Bynum, Vice Chairs Noble and Power and Members of the Committee,

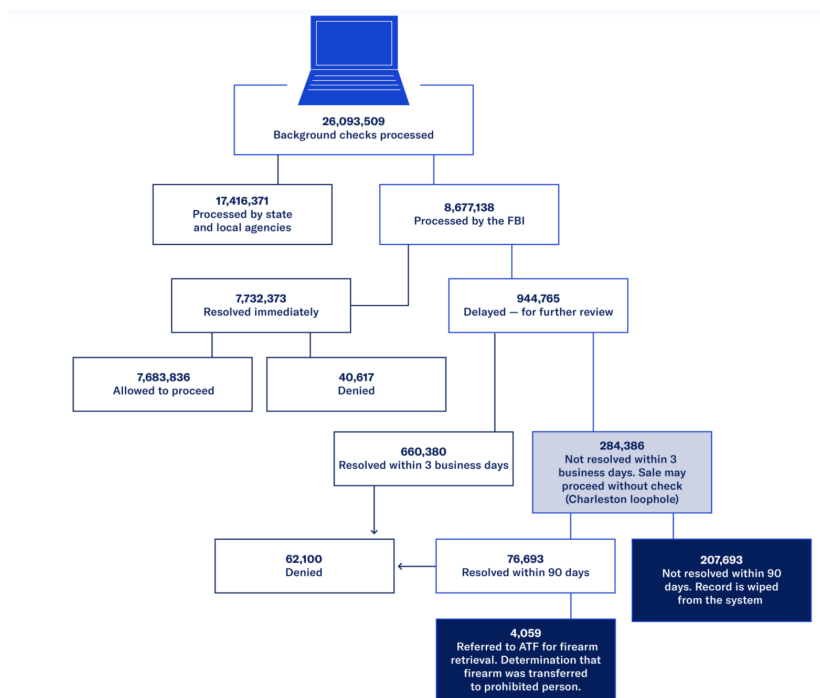
Charleston Loophole Research (Feb 2021)

Part 1: General Facts

The background check process:

Most background checks yield quick results. However, some background checks (around 9%) take more time to complete. In current federal law, if a background check cannot be completed within a 3 day period, the sale can proceed. If the FBI later determines that a sale was made to a prohibited individual, they refer the information to the Bureau of Alcohol, Tobacco, Firearms and Explosives to confiscate the weapon. Often, though, the FBI is unable to resolve the investigation in 90 days, in which case they are required to purge their records and stop attempting to complete the background check.¹

This chart² from Everytown for Gun Safety explains the complexities of the background check (and the Charleston loophole) process in a more visual form.



¹ <https://cdn.americanprogress.org/content/uploads/2021/02/09105454/Charleston-Loophole-FAQ21.pdf>

² <https://everytownresearch.org/report/background-check-loopholes/>

The basic problem

The fact that sales proceed after a set amount of time even without a completed background check is incredibly problematic, given that many prohibited individuals are able to buy and use firearms for a number of days until the FBI realizes that this purchase should have been prohibited, and also that many of these background checks are never completed at all.

Consider the example of the shooter in the infamous 2015 shooting of an African American church in Charleston (from which this loophole gets its name). The shooter bought his weapon two months beforehand, and although his history of substance abuse should have resulted in the purchase being denied, the background check was not completed in 3 days and the shooter obtained the firearm.³

This problem is widespread. In 2017, according to FBI data, 4,864 people were able to buy a firearm despite this sale being prohibited by law.⁴ And according to the Giffords Law Center, almost 25% of purchases which slip through the Charleston loophole but are resolved within 90 days end up being illegal sales.⁵

Cases in which a background check is never completed pose another risk: FBI data shows that the FBI failed to complete over 1.1 million background checks between 2014 and 2019, meaning that we will never know if these individuals should have been prohibited from buying a firearm.⁶

In Oregon

In Oregon, it seems like a firearm sale without a completed background check may be able to go through before the national deadline of 3 days: according to the Giffords Center, “If [Oregon State Police] fails to provide the dealer with an approval number or notify the gun dealer that the purchaser is disqualified from obtaining the firearm **before the close of the gun dealer’s next business day** following the dealer’s background check request, the dealer may deliver the firearm to the purchaser”⁷ (emphasis mine). On the other hand, a 2016 report from the Oregon State Police Criminal Justice Information Services Division asserts that a “dealer may deliver the handgun to the purchaser after a **three business day** period, if OSP does not provide notice that the purchaser has been approved or denied” (see page 3)⁸ (emphasis mine again). I’m not sure what to make of this seeming discrepancy, and if I had more time I would dig deeper to find out, but either way it is clear that the Charleston loophole exists in Oregon law.

³

https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/background-check-procedures/#ootnote_7_5615

⁴ <https://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view>

⁵

https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/background-check-procedures/#ootnote_7_5615

⁶ <https://www.rollcall.com/2019/12/03/fbi-never-completes-hundreds-of-thousands-of-gun-checks/>

⁷ https://giffords.org/lawcenter/state-laws/background-check-procedures-in-oregon/#footnote_4_15500

⁸ <https://www.oregon.gov/osp/Docs/2016FICSUnitOverview.pdf>

Between July of 2018 and January 31st, 2021 (a timespan of approximately two and a half years), there were 934,169 firearm transactions run through Oregon's Firearms Instant Check System.⁹ Although it is unclear how many of these cases resulted in a gun sale before completion of a background check, applying the national statistic of about 3.59% (from 2017)¹⁰ would mean that approximately 33,500 of these sales occurred. Then, applying the 2018 national statistic (derived from FBI data) showing that only 27% of background checks that took longer than three business days were completed,¹¹ we find that around 9000 background checks were not completed within 30 days but later resolved by the FBI. And lastly, applying the Giffords Law Center's findings that almost 25% of purchases which slip through the Charleston loophole but are resolved within 90 days end up being illegal sales, we can estimate that there were around 2,200 sales that slipped through the Charleston loophole and were later caught in Oregon in this timeframe. (Note that because this is a very rough amalgamation of statistics from a few different years that applies national data to Oregon-specific numbers, it only gives us an idea of the magnitude of the problem, *not* a concrete datapoint).

Purchases that slip through the Charleston loophole are especially likely to be prohibited

The advocacy organization Mayors Against Illegal Guns finds that, according to FBI data, "default proceed sales [sales which go through after 3 days despite lacking a complete background check] are more than 8 times more likely to be associated with a prohibited purchaser than sales where the purchaser's background check is resolved within three days."¹²

Denied firearms are more likely to be semiautomatic

Wright et al. found in 2005 that "Compared with handguns sold, handguns in denied sales were somewhat more likely to be semiautomatic pistols."¹³ Given that semiautomatic weapons can injure or kill more people faster than normal firearms, this makes allowing prohibited buyers to slip through the Charleston loophole even more dangerous.

Many states have already fixed this issue

As of 2018, Everytown for Gun Safety found that "seventeen states have laws that extend the three-business-day federal deadline or require a completed check."¹⁴

⁹ <https://www.oregon.gov/osp/Pages/firearmsdashboard.aspx>

¹⁰ <https://archive.thinkprogress.org/default-proceed-2017-909efb375a4d/>

¹¹ <https://www.rollcall.com/2019/12/03/fbi-never-completes-hundreds-of-thousands-of-gun-checks/>

¹² http://www.joycefdn.org/assets/images/blueprint_federal_action.pdf

¹³ <https://www.ncbi.nlm.nih.gov.yale.idm.oclc.org/pmc/articles/PMC1730243/?report=classic>

¹⁴ <https://archive.thinkprogress.org/default-proceed-2017-909efb375a4d/>

Part 2: The Pandemic

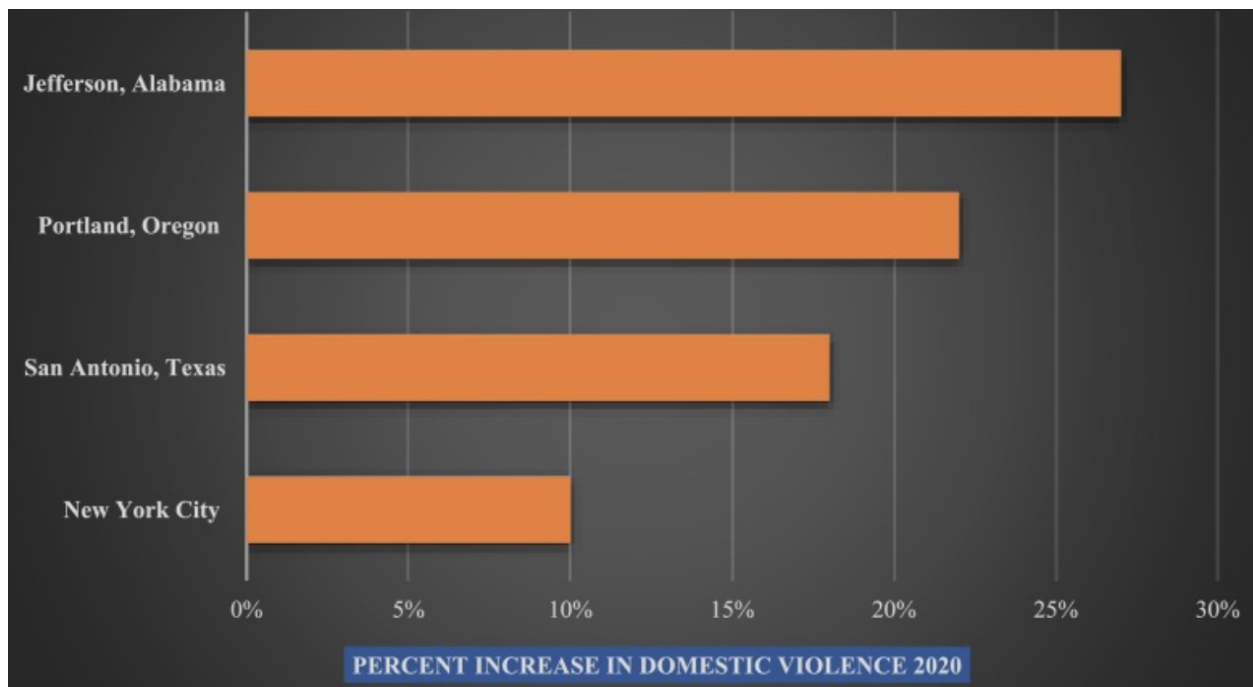
Charleston loophole sales skyrocketed in 2020

Everytown for Gun Safety estimates that at least 7,500 prohibited purchasers were allowed to buy a weapon in 2020 due to the Charleston loophole, which is more than the total number in 2019 and 2018 combined.¹⁵ This likely occurred due to the unprecedented spike in gun sales in 2020, which overwhelmed background check systems.¹⁶

Domestic abuse has increased due to the pandemic

One unfortunate side effect of the pandemic (and its associated lockdowns) has been a dramatic increase in the prevalence of domestic abuse, as victims remain stuck at home, forced to live in terrifyingly close and constant contact with their abusers. The following statistics are taken from this study.¹⁷

In Portland, Oregon, after the imposition of stay-at-home orders, police recorded a 22% increase in domestic violence arrests. San Antonio police recorded an 18% increase relative to 2019, Jefferson County, Alabama recorded a 27% increase, and New York City recorded a 10% increase. These results are summarized in the table below (taken from the same study).



¹⁵ <https://everytownresearch.org/report/background-check-loopholes/>

¹⁶

<https://www.usatoday.com/story/news/politics/2020/05/06/gun-dealers-urged-defer-fbi-gun-sales-soar-amid-coronavirus/3084281001/>

¹⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7195322/>

Access to Firearms Dramatically Worsens Domestic Abuse Outcomes

The following statistics are from this Giffords Law Center article¹⁸, which contains further links to the studies that established these facts.

“An abusive partner’s access to a firearm is a serious threat to victims of domestic violence, making it five times more likely that a woman will be killed.”

“Domestic violence assaults involving a gun are 12 times more likely to result in death than those involving other weapons or bodily force.”

“[F]irearms are used to commit more than half of all intimate partner homicides in the United States.”

Domestic abuse has skyrocketed during the pandemic, and since access to firearms makes domestic abuse far more lethal, it is more critical now than ever, during this pandemic, to keep guns out of the hands of those who will use them to abuse and harm others.

Sincerely,
Ryan Smith

18

https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/#footnote_1_5621