

FIXING THE DEFAULT PROCEED FLAW

After the horrific, racially motivated shooting at a Charleston church that left nine people dead, the FBI revealed that **the shooter should have failed his background check when he bought the murder weapon**. This error exposed a dangerous flaw in the National Instant Criminal Background Check System (NICS)—the three-day default proceed.

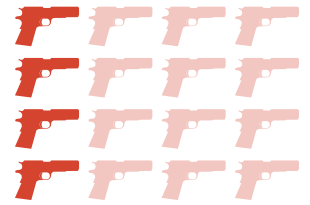
NICS checks on prohibited people can take longer than three days to resolve, especially if the person has a lengthy, recent, or incomplete criminal or mental health history.

According to the FBI, about 10% of background checks require time to contact local, state, or tribal agencies for additional information to determine if an applicant is prohibited from purchasing a firearm.

3,722
prohibited
purchasers were
able to buy firearms
in 2012 because
of the three-day
default proceed.

PROHIBITED PURCHASERS

In default proceed purchases that were eventually resolved, the FBI reports that **nearly one-quarter of people investigated were legally prohibited** from purchasing a firearm.



■ Default proceed sales involving a prohibited purchaser

90% of NICS checks provide an answer in under two minutes.

About 10% of NICS checks require further investigation by the FBI and ATF. If that investigation is not resolved within three days, the sale may proceed anyway (a “default proceed” sale).

8x Default proceed sales are eight times more likely to involve a prohibited purchaser than other sales.

The Problem: Each Year, Thousands of “Default Proceed” Sales are Made to Prohibited Purchasers

Though 90% of background checks conducted through NICS provide an answer in under two minutes, about 10% of cases require further investigation and review by FBI and ATF agents. However, under the federal default proceed law, if a firearm dealer has not been notified within three business days that the sale would violate the law, he or she may sell the firearm anyway.

This happened with the shooter who gunned down nine people at Emanuel AME Church in Charleston, South Carolina. The perpetrator, Dylann Roof, was barred by federal law from purchasing firearms, but just two months before the massacre, Roof was able to buy a pistol from a gun store. After running a NICS check, FBI agents saw that Roof had an arrest record but needed more time to investigate his background. **Since the FBI wasn’t able to obtain his police record in three days, Roof was able to come back and buy his murder weapon on the fourth day.** The “default proceed” provision allowed 3,722 prohibited purchasers to buy guns in 2012.

The Solution: Give the FBI More Time to Investigate

Eighteen states have addressed the default proceed loophole, either through a waiting period or a default proceed extension. These measures ensure that officials will have longer than three days to complete some or all background checks:

- In Utah, a firearm may not be transferred until the background check is complete. Maryland does the same for handguns only, and Florida and Pennsylvania for firearm purchases by certain criminal offenders.
- New York extends the maximum background check period to six months for handguns, while California, Colorado, Connecticut, Illinois, Massachusetts, and New Jersey extend the maximum background check period for all firearms to at least 30 days.
- The remainder of states with laws in this area—Hawaii, Delaware, Minnesota, North Carolina, Rhode Island, Tennessee, and Washington—extend the background check period for some or all firearms to between 7 and 30 days.

Federal legislators can and should follow these states’ example and fix this dangerous gap once and for all. **The FBI has said it supports closing the default proceed loophole.** And we know that giving the FBI more time to investigate gun buyers with red flags might have stopped the Charleston shooter, and undoubtedly other purchasers with criminal intent, from obtaining their murder weapons. **Acting on their own, some gun dealers, including Walmart, have already made the smart decision to refuse to engage in dangerous default proceed transactions.** These dealers will only sell firearms when the results of a background check show that the purchaser is not prohibited—a lifesaving policy that should be made into law nationwide.

PUBLISHED APRIL 2017

For more details and underlying research, visit lawcenter.giffords.org/background-check-procedures

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210+

lifesaving gun safety laws have been enacted in 45 states and DC since the tragedy at Sandy Hook.

115,000

Americans are shot each year—over one million in the past decade.

25x

Americans are 25 times more likely to be killed by a gun than people in other developed nations.

WE’RE ON A MISSION TO SAVE LIVES

For nearly 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence. Founded in the wake of a 1993 mass shooting in San Francisco, in 2016 the Law Center joined with former Congresswoman Gabrielle Giffords to form a courageous new force for gun safety that stretches coast to coast.

CONTACT US

media@giffords.org