



GEORGE GASCÓN
LOS ANGELES COUNTY DISTRICT ATTORNEY

HALL OF JUSTICE
211 WEST TEMPLE STREET, SUITE 1200 LOS ANGELES, CA 90012-3205 (213) 974-3500

May 26, 2022

The Honorable James Clyburn
United States House of Representatives
274 Cannon Office Building
Washington, DC 20515

HOUSE RESOLUTION 1446 (CLYBURN)
SUPPORT

Dear Representative Clyburn:

The Los Angeles County District Attorney's Office is pleased to support House Resolution 1446, the Enhanced Background Checks Act of 2021.

Under federal law, gun purchases may move forward by default after three business days—even if a background check has not been completed. Each year hundreds of thousands of firearm purchases are allowed to proceed and the purchasing individual takes possession of a firearm without a completed background check through this default process.

In 2015, the shooter of nine worshipers at Emanuel A.M.E. Church in Charleston, South Carolina was able to purchase a gun because of this dangerous loophole in the federal firearm background check system. Even though he was legally prohibited from having a firearm, he was allowed to complete the purchase and take possession of the firearm because his background check was not completed within three business days.

H.R. 1446 would eliminate the "Charleston Loophole". H.R. 1446 extends the initial background check review period from three 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.

While 90% of federal background checks are completed in minutes, more than 284,000 background checks take longer than 3 business days every year. A recent review of federal

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background checks through the National Instant Background Check System (NICS) found that background checks that take longer than 3 business days are four times as likely to be denied.

The “Charleston Loophole” is especially dangerous for domestic violence victims. In 2016, the Government Accountability Office found that background checks involving domestic violence flags take longer to resolve. Domestic violence prohibitions involve multiple criteria that often require significant investigation and coordination with local law enforcement. For example, because federal law only prohibits abusers from buying a firearm if they were married to their victims (or if they shared a child or a home), a background check may require investigation into the relationship between the parties. Between 2006 and 2015, it took the FBI more than three business days to determine 30 percent of denials based on misdemeanor crimes of domestic violence. That means licensed dealers were legally authorized under federal law to transfer guns to 18,000 people who were prohibited domestic violence misdemeanants simply because their background checks took longer than 3 business days.

In addition to the risk the “Charleston Loophole” poses to the public, the transfer of firearms to prohibited purchasers through the default proceed process puts law enforcement officers at great risk of death or serious bodily injury. Over 35,000 prohibited purchasers were able to take possession of firearms between 2008 and 2017 because of the 3-day default proceed rule. Each of these cases was referred to the ATF or local law enforcement, who were then tasked with retrieving these firearms. The process of retrieving firearms from prohibited persons is both dangerous and time-consuming, putting law enforcement lives at risk. Extending the time to complete a background check before a firearm is transferred is critical to protecting the public’s safety and to those charged with ensuring it.

Allowing more time for NICS to complete background checks will prevent firearms from falling into the hands of many dangerous persons who are not legally allowed to own or possess a firearm.

The bottom line is firearm sales should not be permitted to move forward until a background check on the prospective purchaser has been completed. For that reason our Office is proud to support H.R. 1446 and stand with you in your efforts to keep guns out of the hands of prohibited persons.

If you have any questions or need additional information, please feel free to contact Daniel Felizzatto in my Sacramento Legislative Office at (916) 442-0668.

Very truly yours,


GEORGE GASCON
District Attorney