

# Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19

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## Executive Summary

For decades, the federal background check system has been instrumental in ensuring that people who are prohibited from having a firearm are not able to purchase one from a licensed gun dealer. Background checks are the foundation of any effective effort to reduce gun violence in this country. But there are cracks in this foundation, cracks that have deepened as the result of an unprecedented surge in gun purchases during the COVID-19 pandemic.

Using data from numerous federal sources and gun sales websites, Everytown for Gun Safety Support Fund (“Everytown”) has analyzed how the federal background check system has become overwhelmed amid the pandemic and how this has exacerbated long-standing, NRA-backed loopholes in our gun laws. This report discusses how background checks work, how denials show that the system is successful, and the surge in background checks during the pandemic, and presents new data on the dangerous expansion of the Charleston loophole, increased demand for no-questions-asked gun sales on online marketplaces, and how do-it-yourself “ghost guns” are in high demand and continuing to undermine our system. The report also lays out recommendations for legislative and executive action, including strengthening the background check system, requiring completed background checks on all gun sales, addressing the Charleston loophole, and instituting a new regulation making clear that the core parts for ghost guns qualify as firearms under the law.

KEY TAKEAWAYS:

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1. Since the inception of the federal background check system in 1994, over 381 million background checks have been run in America.
2. The federal background check system has largely worked as intended since its inception, with more than 3.5 million illegal gun sales denied over the past 26 years.
3. While millions of background checks are processed every year, the number of checks processed during the COVID-19 pandemic is record-breaking and has put an unparalleled strain on the system, with 43 percent more checks being processed between March and November 2020 compared to the same period in 2019.
4. By the end of 2020, it is estimated that nearly 600,000 checks will have taken longer than three business days. Because of the Charleston loophole, all sales that are delayed past this deadline may proceed, meaning at least 7,500 prohibited purchasers could have acquired guns in this fashion—more than during the last two years combined.
5. The number of posts by people looking to buy guns on Armslist—the self-proclaimed “largest free gun classifieds on the web”—has increased dramatically during the pandemic, nearly doubling in 2020 compared to 2019 and signaling a large spike in no-background-check sales.
6. Demand has skyrocketed in 2020 for ghost guns, unregulated do-it-yourself firearms that are not subject to background checks, do not have serial numbers, and cannot be traced when they are recovered at crime scenes.

To protect the federal background check system and further protect our communities, immediate action is needed to address these exacerbated loopholes and ensure guns are not sold without a completed background check.

## Introduction

Background checks are our primary tool for enforcing the laws that block gun possession by people who are at an elevated risk<sup>1</sup> of harming others or themselves—and they are proven to save lives. Before anyone can purchase a gun, they should pass a simple check to make sure they are not legally barred from having a gun—for example, due to a felony conviction or history of domestic violence.

**3.5M**

Since 1994, over 3.5 million sales have been blocked to violent criminals and other people prohibited from having guns.

Since the federal background check system was implemented in 1994,<sup>2</sup> over 381 million background checks have been run in the US,<sup>3</sup> and the system has largely worked as intended, with more than 3.5 million illegal gun sales denied over this 26-year period.<sup>4</sup> Further, research shows that state laws requiring background checks on all handgun sales—no matter who the seller is—are associated with lower gun homicide rates,<sup>5</sup> lower rates of gun trafficking in cities,<sup>6</sup> and lower rates of gun trafficking across state lines.<sup>7</sup> Laws requiring background checks on all gun sales enjoy broad public approval, with poll after poll demonstrating overwhelming support, including from 87 percent of gun owners and 89 percent of Republicans.<sup>8</sup>

However, this otherwise strong system is exposed to a series of loopholes and end runs that undermines our gun safety laws and gun violence prevention efforts, making guns far more likely to fall into the wrong hands. Everytown's new research shows that these persistent weaknesses have been exacerbated and accelerated during the COVID-19 pandemic due to an unprecedented surge in people seeking firearms, whether from a gun dealer, a stranger online, or companies selling unregulated, do-it-yourself firearm kits.

## How Background Checks Work

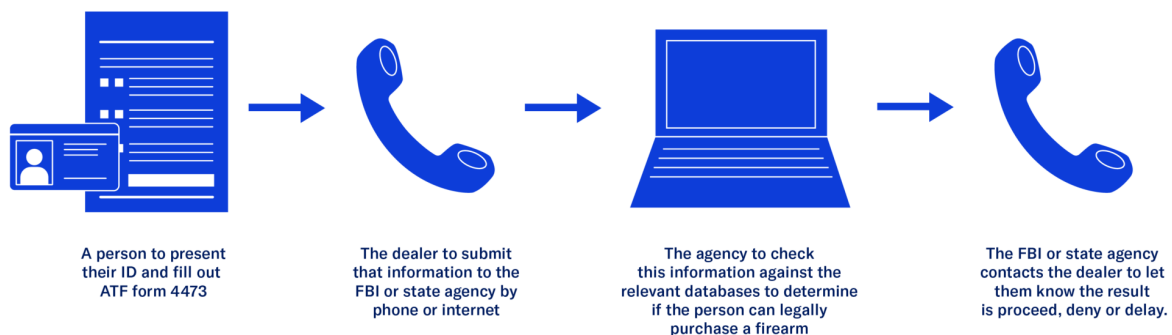
Federal law prohibits certain categories of people from having guns, including people with felony convictions, certain domestic abusers, and fugitives from justice.<sup>9</sup> Background checks serve as the tool for enforcing these prohibitions: Federal law requires licensed dealers to run background checks on all potential gun buyers<sup>10</sup> and requires these checks to be run through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS), which enables a quick determination on whether a prospective buyer is eligible.

To [purchase a firearm](#) from a licensed gun dealer, a would-be buyer presents their ID and fills out a form from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).<sup>11</sup> The dealer then relays this information to the agency conducting the background check. While all states use NICS to determine if a gun purchaser is eligible, the agency responsible for conducting the background check differs by state and type of firearm, with some states relying on the FBI and others having their own state agency.<sup>12</sup>

Officials from the agency will then check this information against the relevant databases to ensure that the prospective buyer can legally purchase a firearm. NICS will inform the agency if the sale (a) may proceed, (b) must be denied, or (c) has to be delayed to complete the investigation. In an average year prior to 2020, 8.7 million checks are processed by the FBI, of which 89 percent are immediately resolved.<sup>13</sup>

How background checks are processed when a person attempts to purchase a gun.

To buy a gun at a federally licensed dealer, federal law requires:



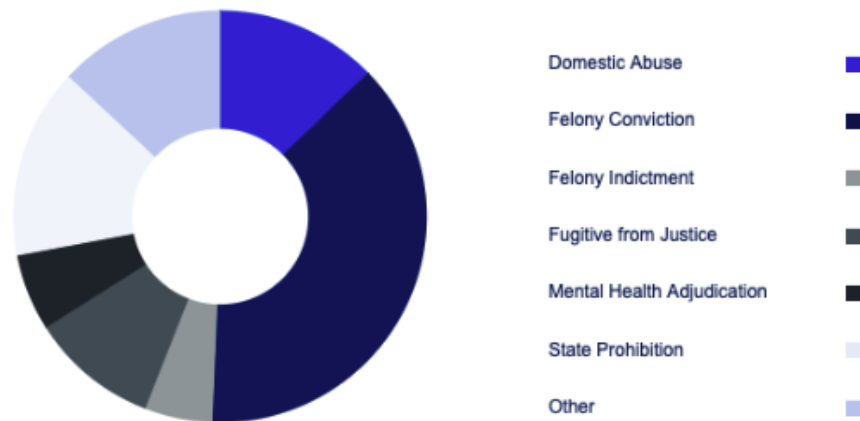
## How Denials Work—And Don't

Since the inception of the system in 1994, background checks have prevented over [3.5 million illegal gun sales](#),<sup>14</sup> highlighting how important this system is in protecting our communities. Between 2015 and 2019, an average of 26 million checks were initiated each year,<sup>15</sup> and over 171,000 of those—or less than 1 percent—were denied each year, most often to people with felony convictions (38 percent of all denials) and to domestic abusers (13 percent).<sup>16</sup>

## The federal background check system stops thousands of illegal gun sales each year.

Select a State:  
\*United States

**Over 3.5 million** illegal sales have been blocked by the system in the United States since 1994, out of the more than 381 million checks conducted.



Everytown analysis of data received directly from the FBI via FOIA/PA and Karberg et al., “Background Checks for Firearm Transfers, 2015.” Hawaii excluded due to limited data reported to the FBI. See <https://everytownresearch.org/report/background-check-loopholes/> for state data.

Not only is it a federal crime for a licensed gun dealer to sell a gun without a background check, it is a crime for the prohibited person to try to buy one in the first place. And it may also be a warning sign. A 2006 internal briefing paper from the ATF indicated that during a seven-year period, 10 to 21 percent of individuals who were referred to ATF field offices for “lying

and trying” to purchase firearms were arrested subsequently for crimes involving guns.<sup>17</sup> Another study found that prohibited people who fail background checks are at a 28 percent higher risk of arrest in the five years after the denial than in the five years preceding it.<sup>18</sup> Congress has indicated that it expects the FBI to notify state and local law enforcement of background check denials,<sup>19</sup> and that should be codified into law. States can also pass laws requiring state agencies or licensed gun dealers to notify local law enforcement of denied sales.

Denials are a product of the records being available in the NICS databases.<sup>20</sup> Each record submitted to NICS, such as a record of a criminal conviction or a protection order, is critical for public safety. A single gun sale to a person prohibited from possessing firearms can lead to tragedy: Despite being legally prohibited, the alleged shooter in Sutherland Springs, Texas, was able to pass the background check for the gun he used to shoot and kill 25 people and wound 20 others—all because the records detailing his previous domestic violence conviction had not been submitted to NICS.<sup>21</sup>

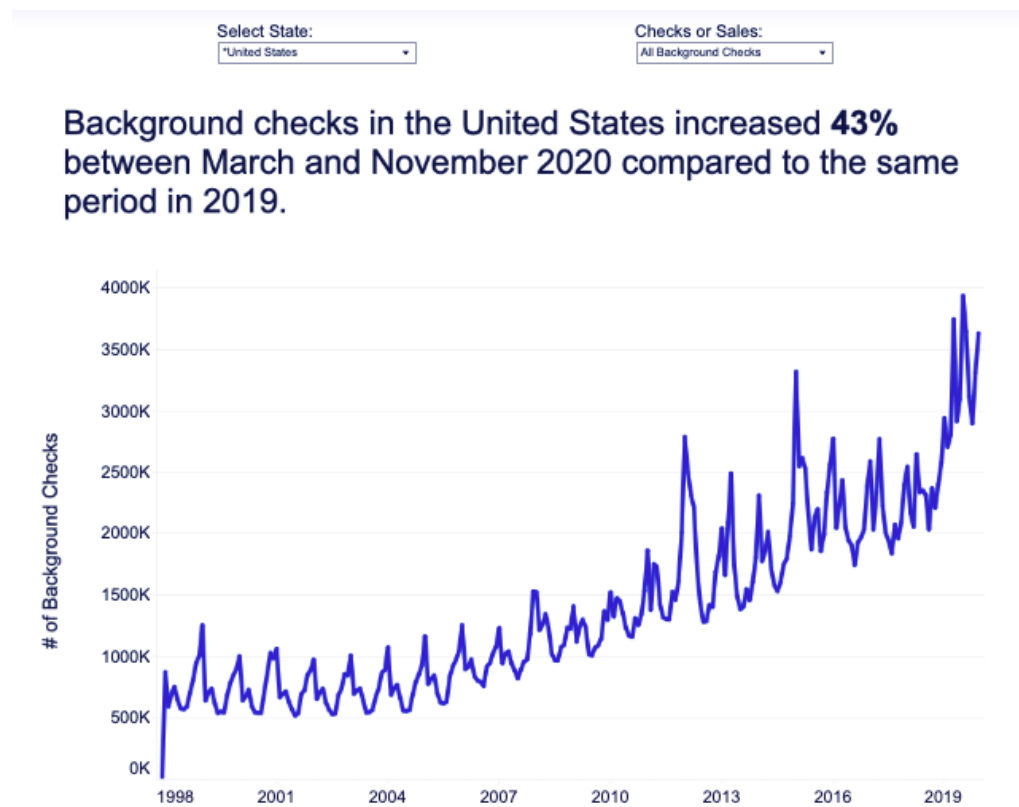
Strong policy and implementation is needed to ensure that all prohibiting records are submitted to NICS and that law enforcement agencies have the tools they need to intervene and stop unlawful purchasers. While federal agencies are required to submit some prohibiting records to NICS, record submission largely falls to state courts and law enforcement agencies.<sup>22</sup> The federal government took steps to improve record submission by passing laws that led to states adding millions of new records to NICS.<sup>23</sup> However, the US Department of Justice (DOJ) could improve the law’s implementation by pressuring federal and state agencies to submit records and ensuring those agencies understand which records need to be submitted into the system.<sup>24</sup> States can also enact reporting laws to improve the number and quality of records in the background check system.

## An Unprecedented Surge in Checks During COVID-19

From 2015 to 2019, an average of more than 26 million federal background checks were processed annually across the country, resulting in an estimated 14.3 million guns sold each year.<sup>25</sup> Gun sale trends tend to fluctuate predictably, with spikes usually occurring around Black Friday, during election years, and in the aftermath of major mass shootings.

This year's pandemic-related surge in gun sales, and therefore background checks, is unparalleled and has put an unprecedented strain on the nation's background check system. In the system's nearly three-decade history, nine of the 10 weeks with the highest number of background checks initiated occurred in 2020.<sup>26</sup> From March to November 2020, 30.3 million background checks were initiated across the country—a 43 percent increase over the same period in 2019—translating to an estimated 17.4 million guns sold, an 81 percent increase. This surge in background checks that need to be processed has overwhelmed the system to such a degree that the Justice Department requested two resources from Congress: (1) funding for the FBI to hire more staff at NICS and (2) the resources and personnel for the ATF to retrieve firearms determined to be unlawfully transferred.<sup>27</sup>

The unprecedented surge in background checks that started in March 2020 has remained at higher than normal levels throughout the pandemic.



Everytown analysis of FBI, NICS Firearm Checks: Month/Year by State/Type, <https://bit.ly/3ggoRRG>. Hawaii excluded due to limited data reported to the FBI.

See <https://everytownresearch.org/report/background-check-loopholes/> for state data.

And it's not only law-abiding citizens who have rushed to the gun stores in 2020, but also those who cannot legally own guns. Between March and July 2020, [twice as many prohibited buyers tried](#) and failed to buy guns from dealers, compared to the same time in 2019.<sup>28</sup>

This unparalleled increase in background checks is driven by people across the country going out and purchasing guns, frequently handguns, to protect themselves and their families. Research has found that more than half of those who purchased a gun during the pandemic did so to protect themselves and their family and, of those, 40 percent indicated they bought the gun because of “concerns about what may happen as the pandemic continues.”<sup>29</sup> Capitalizing on and fomenting this fear, the NRA [has used fears about the pandemic and social disorder](#) to sow division and sells guns, saying in one advertisement: “You might be stockpiling up on food right now to get through this current crisis. But if you aren’t preparing to defend your property when everything goes wrong, you’re really just stockpiling for somebody else.”

But panic buying of firearms is actually making us less safe. The COVID-19 pandemic has [increased the likelihood](#) of gun-related domestic violence, community gun violence, unintentional gun violence, and [gun suicide](#) across America, with preliminary research suggesting the surge in gun purchases is associated with higher rates of gun violence.<sup>30</sup>

## The Widening of the Charleston Loophole

The Charleston loophole allows dealers to complete gun sales after three business days even if a background check is still ongoing.<sup>31</sup> Each year, this loophole puts thousands of firearms in the hands of people who are legally prohibited from possessing them. The loophole takes its name from the 2015 shooting of nine worshipers at Emanuel A.M.E. Church in Charleston, South Carolina, where the shooter, though legally prohibited from having a firearm, was able to buy the gun he used in the shooting because his background check was not completed within three business days.<sup>32</sup>



## SURVIVOR STORIES

Five years ago, a white man filled with hate and armed with a gun murdered my mom, two of my cousins, and my childhood friend while they prayed in Charleston’s Mother Emanuel Church—the same church where my mom first saw me preach. They were killed with a gun that the shooter never should have been able to purchase. He was legally prohibited from buying a gun and should have been stopped in his tracks at the gun store, but because of a NRA-backed loophole that allows a gun sale to go forward when a background check takes longer than three business days, he was able to buy one even though his background check was not completed. The rest is tragic history, and the loophole that stole my family from me is now named the “Charleston loophole” after my hometown.

[Read Rev. Sharon Risher’s story on Moments That Survive.](#)

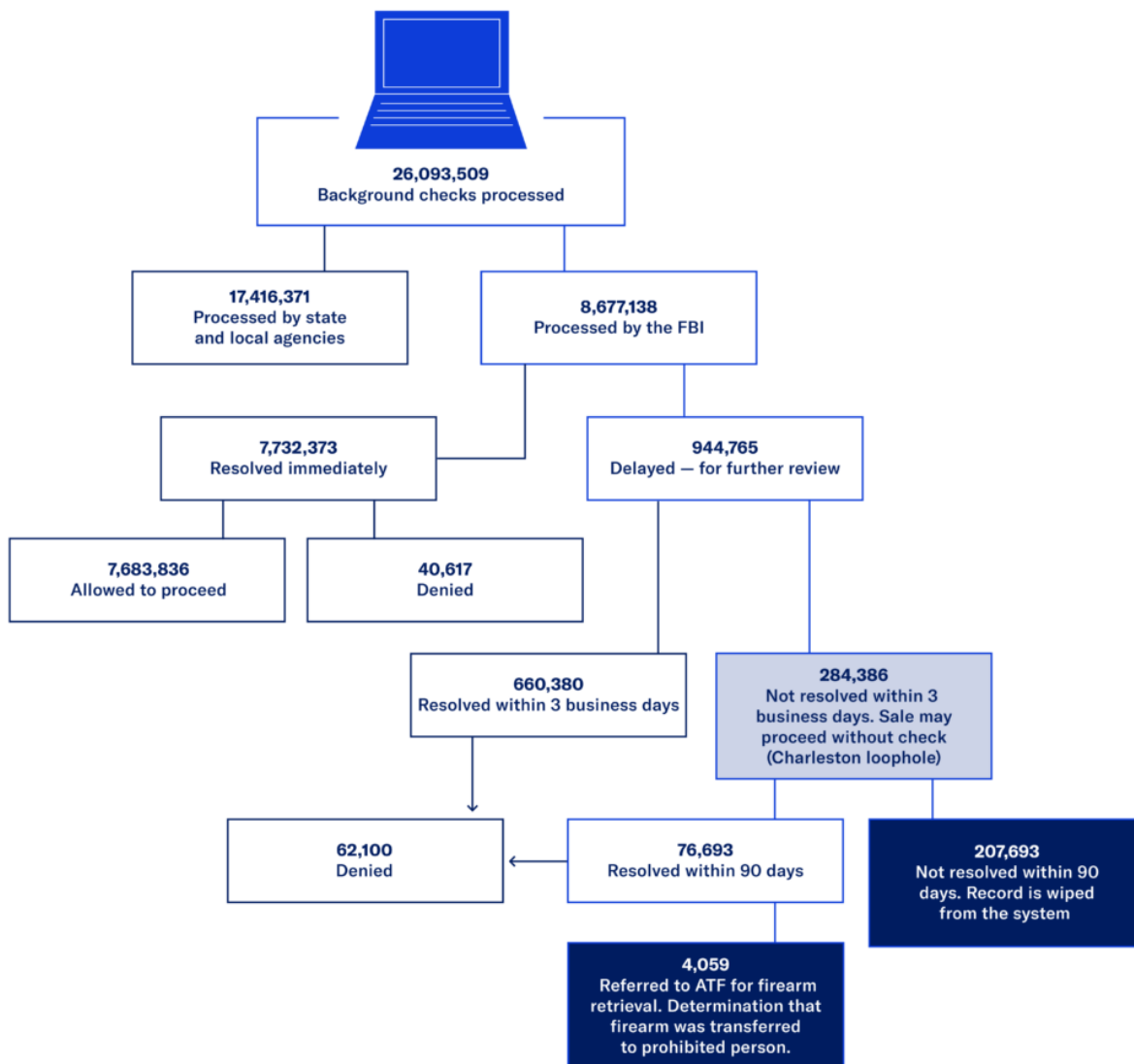
The Charleston loophole has been persistent, as more than 284,000 checks take longer than three business days every year.<sup>33</sup> And [FBI data obtained by Everytown](#) shows that the pandemic has made matters worse: More than 294,000 background checks were unresolved after three business days and allowed to proceed between March and July 2020 alone—more than the total number in all of 2019.

Each of these hundreds of thousands of checks is a potential opportunity for a prohibited purchaser to acquire a gun since dealers can legally sell the gun after those three days. While not every delayed check results in a sale—gun sellers such as Walmart will not transfer the gun until the check is completed—many do.<sup>34</sup> The FBI has up to 90 days after the background check was initiated to complete the check, and if it is later determined a firearm was indeed transferred to someone who is prohibited, the FBI will refer that information to the ATF so officials can retrieve the firearm. Among the checks that the FBI is able to resolve before the 90-day deadline, more than 5 percent—or an estimated 4,000 each year—are later found to have resulted in illegal sales.<sup>35</sup> This rate of denial is four times higher than for checks completed before the Charleston loophole deadline, meaning that an outsized percentage of these delayed buyers are actually prohibited purchasers.<sup>36</sup>

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Given the surge in gun sales during the COVID-19 pandemic, the Charleston loophole has become even deadlier. Everytown estimates that the loophole resulted in transfers of guns to at least 7,500 prohibited purchasers during 2020—more than the last two years combined.<sup>37</sup>

In an average year, 4,000 prohibited purchasers acquire firearms because of the Charleston loophole.



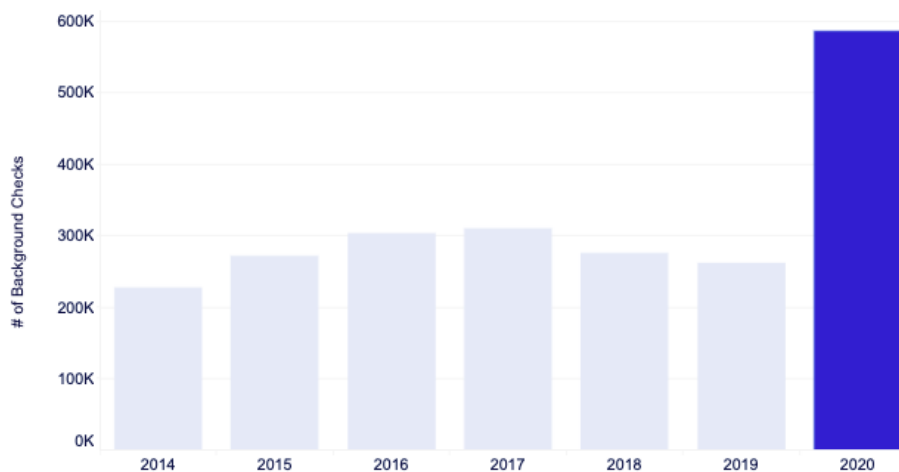
This estimate is likely conservative for two reasons: (1) It does not include data on delayed checks in states that run their own background checks,<sup>38</sup> and (2) It does not account for delayed checks that are unresolved at 90 days and are therefore completely wiped from the system. FBI regulations require that all delayed background check records be purged from the NICS system before the 90-day deadline, regardless of whether they are completed. Only about a quarter of all checks that take longer than three business days are completed to determine if a sale should have occurred or not.<sup>39</sup> But when they are not completed, they are deleted entirely, meaning there is no way to know definitively how many of those sales that went through without a check resulted in prohibited purchasers getting their hands on a gun. In an average year, over 200,000 records are purged, and the checks remain unresolved.<sup>40</sup> If that rate of purged records remains the same, Everytown estimates that by the end of 2020, over 438,000 checks will have been completely wiped from the system.

The number of delayed background checks and purged checks is projected to be twice as high in 2020 compared to an average year.

### Default Proceeds

Select View:  
Default Proceeds

By the end of 2020, an estimated 585,585 checks will have taken longer than three business days.

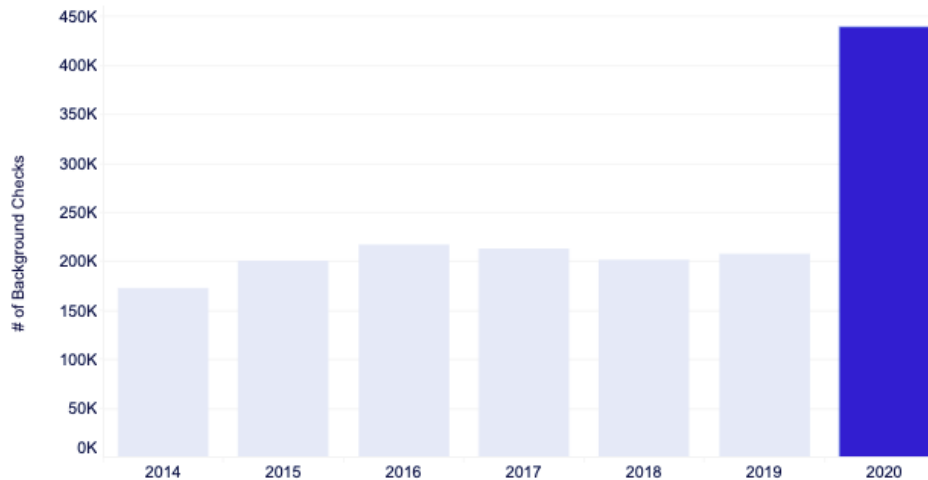


Everytown analysis of data received directly from the FBI via FOIA/PA and from the 2014–2019 NICS Operations Reports.

## Purged Background Checks

Select View:  
Purged Checks

By the end of 2020, an estimated 438,702 checks will have been purged from the system.



Everytown analysis of data received directly from the FBI via FOIA/PA and from the 2014–2019 NICS Operations Reports.

Congress can close the Charleston loophole by prohibiting firearm sales from moving forward unless a background check on the prospective purchaser has been completed. In the absence of a federal law, states can pass laws to give authorities longer than three business days to complete a check. Indeed, 19 states and Washington, DC have done so.<sup>41</sup> The FBI should also require that gun dealers inform them if they sell a firearm through the Charleston loophole to prioritize completing those background checks, and should maintain records of delayed background checks for as long as it takes to complete each check—even if it extends beyond 90 days. Especially now, amid the surge in gun sales during the COVID-19 pandemic and with the increased likelihood of guns ending up in the wrong hands, the curtailing of record purges should be a priority.

## No-Questions-Asked Online Sales Continue to Weaken the System

Our federal background check law was written more than 25 years ago, long before the establishment of massive online gun marketplaces like [Armslist](#), the self-proclaimed “largest free gun classifieds on the web,” that serve a swelling market for anonymous gun purchases. Users have the option to post ads selling firearms they own, ads that indicate their desire to purchase firearms, or ads offering to trade a firearm for another type. Since federal law requires a background check only when the seller is a licensed gun dealer, all other sales—like unlicensed gun sales initiated over the internet—are unregulated and unchecked if a state has not closed this loophole.<sup>42</sup> On an average day prior to 2020, over 3,100 firearms for sale that do not legally require a background check were posted on Armslist, and each one of those posts was an opportunity for a prohibited person to acquire a gun. Previous research shows prohibited purchasers seek out these ads: One in nine people looking to buy guns from unlicensed sellers would fail a background check, a rate *seven times higher* than the denial rate at gun stores.

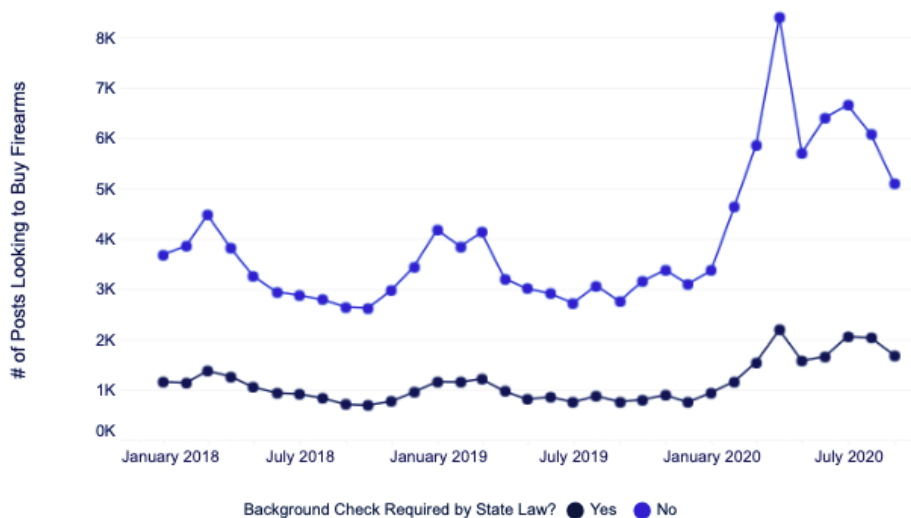
### SURVIVOR STORIES

Our beautiful daughter, Darien, was shot multiple times on January 8, 2010 when armed intruders burst into her home and opened fire into her bedroom where she was sleeping. Darien spent weeks in the hospital following the shooting. Sadly, fifty-one days later, she died of complications from her gunshot wounds. She was only 25 years old. To compound this devastating tragedy, Darien’s homicide remains unsolved. The gun that killed her was eventually found at the scene of another unrelated murder on February 10. Darien was still alive at the time but the connection was not made until after Darien’s death on February 28. We later learned the handgun that was used in both shootings had been sold as a private sale at a gun show where no background check was required, no name was recorded, and no records had to be kept. Because of that, we’ll likely never know who killed our daughter. This sale took place at a gun show but could have just as likely been online. There should be a background check on every gun sale, no matter where it happens.

[Read Judi and Wayne Richardson’s story on Moments That Survive.](#)

The high number of daily posts for sales that do not legally require a background check has persisted throughout the pandemic. However, the demand for guns from those sellers has dramatically increased. The surge in demand at gun stores has been well documented, but Everytown’s research shows the demand extends to sales that can take place with no background check. The average number of posts on Armslist between March and September 2020 by people looking to purchase a firearm in states that do not require background checks on all sales doubled over the same period in 2019.

The number of posts from people looking to buy firearms in states without laws requiring background checks on all gun sales increased significantly during the COVID-19 pandemic.

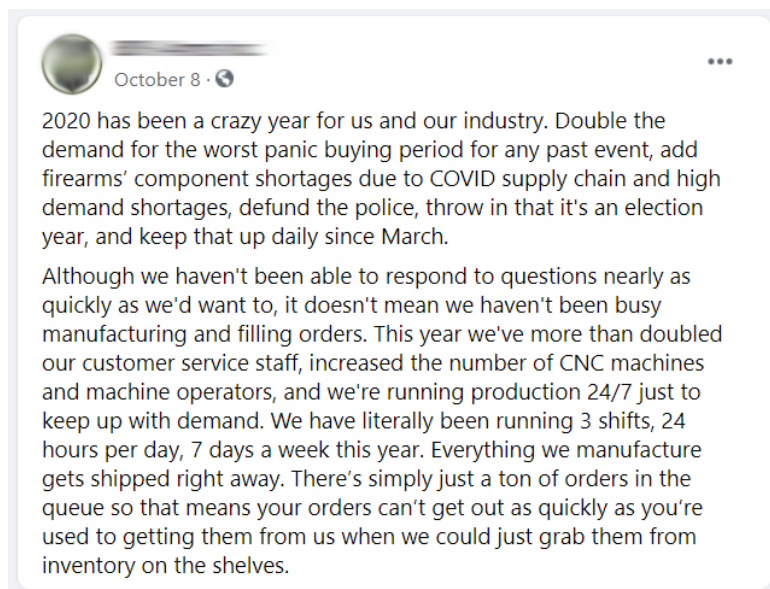


Everytown analysis of posts listed on Armslist.

The federal and state governments can help mitigate the dangers of online gun marketplaces by requiring background checks on all gun sales, not just in brick-and-mortar stores but in all places guns are sold today, including online. Twenty-one states and Washington, DC have taken action to close this loophole by requiring background checks on all handgun sales,<sup>43</sup> and to positive effect: States that require background checks on all handgun sales—no matter who the seller is—are associated with 10 percent lower gun homicide rates,<sup>44</sup> 48 percent lower rates of gun trafficking in cities,<sup>45</sup> and 29 percent lower rates of gun trafficking across state lines.<sup>46</sup>

## Ghost Guns Undermine the Background Check System

A [ghost gun](#) is a DIY gun made from unregulated building blocks. Sellers provide all the necessary parts for a functional gun, often in a kit, and advertise that a complete gun can be assembled in as little as 15 minutes. Due to a flawed legal [interpretation by ATF](#), these sales do not currently require a background check—and thus provide a prime avenue for people with felony convictions, domestic abusers, and others prohibited from having a gun with a prime avenue to arm themselves.

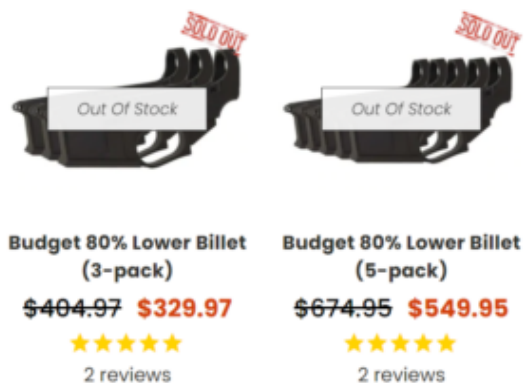


This demand for ghost gun components has persisted throughout the pandemic.

Because ghost guns aren't regulated under ATF's current interpretation of federal law and therefore do not require a serial number, it is incredibly difficult to understand the true scope of the problem they present. Still, what is known is extremely troubling. Law enforcement agencies are recovering these homemade, unserialized firearms from criminals at alarming rates. For example, 30 percent of the guns being recovered by the ATF in California are unserialized,<sup>47</sup> and Washington, DC, saw a 360 percent increase in ghost gun recoveries, with law enforcement recovering 115 ghost guns in 2019, compared to 25 in 2018.<sup>48</sup> Similarly, from Philadelphia to Syracuse to Denver, ghost gun recoveries are increasing in cities, and law enforcement is speaking out about this growing problem.<sup>49</sup> And [Everytown's analysis](#) of more than 100 federal prosecutions that involved ghost guns over the past decade shows an unsurprising link

between ghost guns and crime. In nearly half of the prosecutions reviewed, the defendants were prohibited from possessing any firearm and would not have passed a background check if one were required.

Everytown's [federal case review](#) also found troubling examples of white supremacists obtaining ghost guns, and searches of popular online forums show that extremists openly discuss the benefits of ghost guns and share advice on how to make them. Recent examples since the killing of George Floyd show how armed extremists engaged in civil unrest have turned to ghost guns as a weapon of choice. For example, two men from Missouri, both prohibited from possessing firearms and in possession of an AR-15 without a serial number, face federal firearms charges linked to plots to cause unrest in Kenosha, Wisconsin, following the police shooting of Jacob Blake.<sup>50</sup> In Richmond, Virginia, a prohibited purchaser with a homemade AR-15 was arrested after police stopped the truck he was in, which had been involved in a confrontation with protesters at a Robert E. Lee statue.<sup>51</sup> And in Oakland, California, an anti-government extremist who killed a Federal Protective Service officer during a Black Lives Matter protest as part of a plot to incite civil unrest used a homemade AR-15 assault-style rifle to commit the murder.<sup>52</sup>



Even among companies not explicitly warning customers about delays, most say they are dealing with shortages, indicating they, too, are dealing with unprecedented demands.





Dozens of ghost gun sellers posted on their websites that customers should expect delays due to overwhelming demand.

As with the increased demand at gun stores and on Armslist, the online market for untraceable ghost guns has reached unprecedented levels during COVID-19. In the early stages of the pandemic, it was reported that more than a dozen online ghost gun sellers had reported order delays and depleted stock, as customers ramped up purchasing.<sup>53</sup> This dangerous pattern appears to have persisted through the summer and into the fall. Everytown analyzed the websites of over 100 sellers offering the core parts or kits for ghost guns and found that dozens of these sellers reported shipping delays due to “exceptionally high demand.” Even among companies not explicitly warning customers about delays, almost all of these sellers said they were dealing with shortages in inventory, indicating they were also experiencing an increase in demand during the pandemic. And these delays as a result of the high demand have persisted throughout the pandemic, as many sellers capitalized on social unrest and the election to bolster sales.

The ATF can tackle this problem by issuing a [regulation](#) making clear that the core parts for ghost guns qualify as firearms under the law—and therefore cannot be sold without a serial number or a background check.

## Summary of Recommendations for Action

For decades, these loopholes have existed in our background check system and too often have resulted in tragedy. The surge in gun sales amid the COVID-19 pandemic has exacerbated these long-standing gaps and now, more than ever, action must be taken to protect our communities. Actions that are detailed throughout this report are summarized below, broken down by what can be done by federal and state legislative action and what can be done by executive action.

### RECOMMENDED FEDERAL AND STATE LEGISLATIVE ACTION.

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Comprehensive federal background check legislation is essential to close the dangerous loopholes in our system. States can also act to fill gaps left by federal law.

1. Congress should require background checks on all gun sales, not just in brick-and-mortar stores but in all places guns are sold today, to help minimize the dangers of online gun marketplaces. State legislatures should also pass laws to require background checks on all gun sales within their borders—action that is particularly important in the absence of a protective federal law.
2. Congress should close the Charleston loophole by prohibiting firearm sales from moving forward without a completed background check. In the absence of a federal law, states should pass laws to give authorities longer than three business days to complete a check.
3. States should pass [laws](#) to require all relevant records be submitted in the background check system and to improve the quality of those records.
4. Congress can codify its directive for the FBI to share denial information with state and local law enforcement. States should pass laws requiring state agencies or licensed gun dealers to notify local law enforcement when a prohibited person tries to buy a gun and fails a background check.

## RECOMMENDED EXECUTIVE ACTION.

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While federal legislation to close the loopholes in our background check system remains necessary, there are several important executive actions that can be taken immediately to improve the system we have now.

1. The ATF should issue a [regulation](#) to make clear that the core parts for ghost guns qualify as firearms under the law and as a result may not be sold without a serial number or a background check.
2. Closing the Charleston loophole requires legislation, but gun dealers should be required to notify the FBI if they sell a firearm through the Charleston loophole so that the FBI can prioritize those background checks, and the FBI should be required to keep records of delayed background checks for as long as it takes to complete each check.
3. The FBI should notify state and local law enforcement every time a prohibited person tries to buy a gun and fails a background check.
4. The DOJ could enhance the impact of the Fix NICS Act of 2017 by pressuring federal and state agencies to submit relevant records, ensuring those agencies understand which records need to be entered into the system, and requiring that all background checks include a search of the detailed information in the National Data Exchange (N-DEx) database.

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### CITATIONS

1 Garen J. Wintemute et al., “Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity among Authorized Purchasers of Handguns,” *Journal of the American Medical Association* 280, no.24 (December 1998): 2083-7, <https://bit.ly/3msdsM7>; Garen J. Wintemute et al., “Subsequent Criminal Activity among Violent Misdemeanants Who Seek to Purchase Handguns: Risk Factors and Effectiveness of Denying Handgun Purchase,” *Journal of the American Medical Association* 285, no. 8 (February 2001): 1019-1026, <https://bit.ly/39x5uh4>.

2 Established under the Brady Handgun Violence Prevention Act of 1993, P.L.103-159, effective February 28, 1994.

3 Federal Bureau of Investigation, NICS Firearm Checks: Month/Year, accessed December 2, 2020, <https://bit.ly/35ZF1qn>. Jennifer C. Karberg et al., “BackgroundChecks for Firearm Transfers, 2015–Statistical Tables,” (US Department of Justice, Bureau of Justice Statistics, November 2017), <https://bit.ly/2uYfUVb>. During the Brady interim period (the period after the Brady Act took effect but before the NICS became operational) between March 1, 1994, and November 29, 1998, 12,740,000 background checks were conducted. Since the NICS began to operate on November 30, 1998, through to November 30, 2020, over 368,000,000 checks have been processed. While many of these checks are initiated to ensure a gun sale or transfer can proceed, some of these checks are processed for concealed carry permits, meaning that not every check corresponds with a gun being sold.

4 Data from 1994 to 2015 obtained from Karberg et al., “Background Checks for Firearm Transfers, 2015.” Data from 2016 to 2019 were obtained by Everytown from the FBI directly. Though the majority of the transactions and denials reported by the FBI and BJS are associated with a firearm sale or transfer, a small number may be for concealed carry permits and other reasons not related to a sale or transfer.

5 Michael Siegel and Claire Boine, “What Are the Most Effective Policies in Reducing Firearm Homicides?,” Rockefeller Institute of Government, March 29, 2019, <https://bit.ly/2KTWOfk>.

6 Daniel W. Webster et al., “Effects of State-level Firearm Seller Accountability Policies on Firearm Trafficking,” *Journal of Urban Health* 86, no. 4 (July 2009): 525–537, <https://bit.ly/3lswWim>.

7 Daniel W. Webster et al., “Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws,” *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Baltimore: Johns Hopkins University Press, 2013), 109-121, <https://bit.ly/39LRoZg>.

8 Quinnipiac University, “US Voters Oppose Trump Emergency Powers on Wall 2-1 Quinnipiac University National Poll Finds; 86 Percent Back Democrats’ Bill on Gun Background Checks,” news release, March 6, 2019, <https://bit.ly/2ENkKH4>.

9 18 USC § 922(d).

10 18 USC § 922(t). Certain state firearm permits exempt the holder of the permit from the federal background check requirement at the point of sale.

11 Bureau of Alcohol, Tobacco, Firearms and Explosives, 4473 Part 1—Firearms Transaction Record Over-The-Counter (ATF Form 5300.9), <https://bit.ly/2Jl4yBO>.

12 Thirteen states are considered full point of contact (POC) states, meaning dealers contact a state or local agency for all background checks, while dealers in the 31 non-POC states and DC contact the FBI directly for all checks. Seven states are considered partial POC states, as dealers contact different agencies for different types of gun sales.

13 Based on a five-year average: 2015-2019. Data on the number of checks processed by the FBI for

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2015 to 2019 obtained from the Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Data on the number of checks immediately resolved for 2015 to 2018 obtained by Everytown from the FBI directly, and for 2019 from FBI, NICS Operations Report, 2019. Between 2015 and 2019, the FBI processed 43,385,691 checks, of which 38,661,865 checks—or 89 percent—were immediately resolved. These numbers exclude the checks processed by state or local agencies.

14 Data from 1994 to 2015 obtained from Karberg et al., “Background Checks for Firearm Transfers, 2015.” Data from 2016 to 2019 were obtained by Everytown from the FBI directly. Though the majority of the transactions and denials reported by the FBI and BJS are associated with a firearm sale or transfer, a small number may be for concealed carry permits and other reasons not related to a sale or transfer.

15 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>.

16 Data from 2015 to 2019 were obtained by Everytown from the FBI directly. Between 2015 and 2019, 856,777 illegal gun sales were denied, or an average of 171,355 each year. Of these, 324,973 were to convicted felons (38 percent of all denials) and 109,135 were to domestic abusers (13 percent).

17 Jose Pagliery, “Gun Form Liars May Go on to Commit Gun Crimes, Internal ATF Reports Suggests,” *CNN*, December 21, 2018, <https://cnn.it/37Kc5Cg>.

18 James M. Tien et al., “Recidivism of Denied Prospective Firearm Purchases,” May 2008, <https://bit.ly/2Vgvc10>.

19 The final FY2020 omnibus appropriations bill incorporated the report accompanying the House passed Commerce, Justice, Science, and Related Agencies Appropriation Bill, 2020, and that report included a NICS denial notification directive.

20 Federal Bureau of Investigation, National Instant Criminal Background Check System (NICS), <https://bit.ly/3fVHaGP>. The NICS is made up of three databases: (1) the National Crime Information Center (NCIC), which contains records of wanted persons, subjects of protection orders, and other persons who may pose a threat to officer and public safety; (2) the Interstate Identification Index (III), which provides access to criminal history records, and (3) the NICS Indices, which contain records contributed by federal, state, local, and tribal agencies pertaining to persons prohibited from possessing or receiving a firearm pursuant to federal and/or state law, records that are not typically available via the III or NCIC.

21 Eli Rosenberg and Wesley Lowery, “Devin Patrick Kelley Had a Violent Past, Records Indicate,” *Washington Post*, November 6, 2017, <https://wapo.st/37iKpnK>.

22 State courts and law enforcement agencies are the holders of records of state criminal convictions and protection orders, for example.

23 The NICS Improvement Act of 2007 was passed after the mass shooting at Virginia Tech, and the Fix NICS Act of 2017 was passed after the mass shooting in Sutherland Springs, Texas.

24 The DOJ could also require that all background checks include a search of the detailed information in the National Data Exchange. The NICS currently searches three databases managed by the FBI’s Criminal Justice Information Services (CJIS) Division: the Interstate Identification Index (III), National Crime Information Center (NCIC), and the NICS Indices. CJIS maintains a fourth database, the National Data Exchange (N-DEx) system, which contains records not found in the III, NCIC, or NICS Indices, such as incident and case reports, but searches of the N-DEx are not required for a background check.

25 Federal Bureau of Investigation, NICS Firearm Checks: Month/Year by State and Type, <https://bit.ly/2MIIXs6>; Jurgen Brauer, “Demand and Supply of Commercial Firearms in the United States,” *Economics of Peace & Security* 8 (no.1) 2013: 23-28, <https://bit.ly/3eF6peJ>. Everytown estimated the number of firearms sold for each month and year using the same methodology used by the Small Arms

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Survey, an adaptation of the method used by Small Arms Analytics & Forecasting, which estimates that 1.1 firearms are sold for each handgun and long gun check, and 2 firearms are sold for each “multiple” check conducted. The state-level numbers are as provided by the FBI, and the sum of these numbers does not equal the US totals that the FBI provides in their reporting. Everytown also excluded the US territories from this analysis.

26 Federal Bureau of Investigation, NICS Firearm Checks: Top 10 Highest Days/Weeks, accessed December 2, 2020, <https://bit.ly/3lmYgyv>.

27 Betsy Woodruff Swan, “Trump Justice Department Asks for More Resources to Enforce Gun Laws,” *Politico*, May 12, 2020, <https://politi.co/3fQju6E>. Any person who believes he or she was wrongfully denied the transfer of a firearm may challenge the denial determination. 28 C.F.R. § 25.10. According to the FBI’s 2019 NICS Operations Report, 19,728 challenge requests were processed, of which 5,407 denied transactions were overturned.

28 Data from the FBI received by Everytown via Freedom of Information Act/Privacy Act (FOIA/PA). Between January and July 2020, 88,402 checks were denied, compared to 42,300 during the same time in 2019.

29 Jagdish Khubchandani and James H. Price, “Public Perspectives on Firearm Sales in the United States during the COVID-19 pandemic,” *Journal of the American College of Emergency Physicians Open*, October 1, 2020, <https://bit.ly/2VP2C7h>.

30 Julia P. Schleimer, “Surge in Firearm Purchasing During Pandemic’s Onset Linked to Higher Rates of Firearm Violence in U.S.,” *medRxiv*, July 11, 2020, <https://bit.ly/36T3yhj>.

31 18 U.S.C. 922(t)(1)(B)(ii).

32 Michael S. Schmidt, “Background Check Flaw Let Dylann Roof Buy Gun, FBI Says,” *New York Times*, July 10, 2015, <https://nyti.ms/2VmID0y>.

33 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Between 2015 and 2019, 1,421,928 checks were delayed past three business days, or an average of 284,386 checks every year.

34 Walmart, “Walmart Statement on Firearms Policy,” February 28, 2018, <https://bit.ly/2HYFCPX>.

35 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Between 2015 and 2019, 20,295 checks were referred to the ATF for firearm retrieval, or an average of 4,059 checks every year.

36 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Of the 76,693 checks that were delayed past three business days and resolved within 90 days annually, 4,059 checks were later found to have resulted in illegal sales—or 5.3 percent. Each year, of the 7,732,373 checks processed by the FBI that were immediately resolved, 102,717 were denied—or 1.3 percent.

37 Everytown calculation using data received from the FBI via FOIA/PA and from the FBI’s NICS Operations Reports. In an average year, 5.3 percent of checks that take longer than three business days and are resolved within 90 days result in an illegal sale. Based on data received from the FBI, between January and July 2020, 341,591 checks were delayed past three business days—or an average of 48,799 each month. It’s projected that by the end of 2020, 585,585 checks will be delayed, and 146,882 of these will be resolved before the 90-day deadline. Using the 5.3 percent rate, Everytown estimates that by the end of 2020, 7,785 sales will result in a prohibited purchaser acquiring a gun.

38 Data is currently unavailable for full POC and partial POC states who run their own checks and have not closed the Charleston loophole. The calculations in this report are based only on the background

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checks processed by the FBI.

39 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Between 2015 and 2019, 383,463 checks were delayed past three business days and resolved before the 90-day deadline, or an average of 76,693 checks every year.

40 Federal Bureau of Investigation, NICS Operations Reports 2015–2019, <https://bit.ly/36nWN6X>. Between 2015 and 2019, 1,038,465 checks were unresolved at 90 days and therefore purged from the system, or an average of 207,693 checks every year.

41 CA, CO, CT, DE, FL, HI, IL, MA, MD, MN, NC, NJ, NY, PA, RI, TN, UT, WA, and WI.

42 Sales must also comply with any relevant state laws, including state-level background check laws.

43 Eleven states require only a point-of-sale check for sales by unlicensed handgun sellers (CA, CO, DE, NM, NV, OR, PA, RI, VA, VT, and WA); six states require only a background check on those sales pursuant to a purchase permit (HI, IL, MA, MI, NC, and NE); and four states (CT, MD, NJ, and NY) and DC require a background check at both occasions.

44 Siegel and Boine, “Most Effective Policies in Reducing Firearm Homicides.”

45 Webster et al., “Effects of State-level Firearm Seller Accountability Policies.”

46 Webster et al., “Preventing the Diversion of Guns to Criminals.”

47 Alain Stephens, “Ghost Guns Are Everywhere in California,” *The Trace*, May 17, 2019, <https://bit.ly/2T5YAGW>.

48 Amanda Michelle Gomez, “DC Recovered 115 Ghost Guns in 2019, up from 25 the Year Before,” *Washington City Paper*, January 10, 2020, <https://bit.ly/3aktwt3>.

49 In Philadelphia, the ATF recovered 42 ghost guns between June 2018 and June 2019. Jesse Hughes, “Ghost Guns Create a Haunting Problem for Pennsylvania,” *Fox 43* (Harrisburg, PA), December 16, 2019, <https://bit.ly/2PyuOs8>; ATF agents at the Denver Field Division recovered 23 ghost guns in 2018. Jaclyn Allen, “Untraceable, Unregulated and Easy to Build: Colorado and the Increasing Popularity of ‘Ghost Guns,’” *ABC Denver 7*, February 22, 2019, <https://bit.ly/2TrSiAA>; In New York State, the Onondaga County District Attorney warned that the county “has seen a significant increase in the possession and use of ‘ghost guns,’ with over 2 dozen confiscated or secured by our local police agencies and the state police in the last year.” Douglass Dowty, “DA: Syracuse Man Shot 6-Year-Old Nephew with Untraceable ‘Ghost Gun,’” *Syracuse.com*, January 6, 2020, <https://bit.ly/2wdXnV8>.

50 Katie DeLong, “Missouri Men Face Firearms Charges Linked to Kenosha Unrest,” *Fox 6 Milwaukee*, September 4, 2020, <https://bit.ly/37xS5Tg>.

51 Emma North, “Convicted Felon Pleads Guilty to Firearm Possession during civil Unrest,” *ABC 8 News* (Richmond, VA), August 25, 2020, <https://bit.ly/3omGGwB>.

52 “Alleged Oakland, Ben Lomond Gunman Steve Carrillo Linked to Far Right ‘Boogaloo’ Movement,” *CBS 5 KPIX* (San Francisco), June 16, 2020, <https://cbsloc.al/3fZWfaB>.

53 Tess Owen, “People are Panic Buying Untraceable ‘Ghost Guns’ Online in the coronavirus Pandemic,” *Vice*, March 27, 2020, <https://bit.ly/2JmVLLY>.