



February 3, 2022

Chairman Sears and honorable members of the Senate Judiciary Committee,

My name is Alison Shih and I serve as Counsel for Everytown for Gun Safety where I'm responsible for supporting state legislative efforts in Vermont.

Thank you for the opportunity to testify on behalf of S. 30. I want to focus my testimony on one particular aspect of S.30 that has been the source of a few questions during the legislative deliberation process, and that's the extension of the "default proceed" period, which would close the "Charleston Loophole."

Since 1993, a dangerous loophole in federal law has permitted firearms sales to proceed after three days even if a background check has not been completed, which is undermining the efficacy of the laws you have passed to help keep people safe.<sup>1</sup> Thanks to legislation that you all passed into law in 2018, Vermont law requires background checks for all firearm sales<sup>2</sup>, an important foundational, common-sense gun violence prevention tool, which helps prevent people from purchasing guns who are legally prohibited from possessing a firearm due to a history of dangerous behavior. Background checks help keep guns out of the hands of those who would use them to do harm to themselves or others.

However, the Charleston Loophole undermines the efficacy of Vermont's background check system. This loophole can have deadly consequences. In 2015 in Charleston, South Carolina nine worshipers were shot in church by a man who was legally prohibited from owning a firearm, but was able to buy one because of this dangerous loophole.<sup>3</sup> Recognizing the danger, twenty states and DC have enacted laws to address it.<sup>4</sup> Extending the background check to 30 days will protect victims of abuse and would have prevented the mass shooting in Charleston. Good gun safety policy is proactive. This bill could prevent Vermonters from experiencing a similar tragedy.

We know that because of this loophole, thousands of people who are legally prohibited from owning a firearm are able to purchase one anyway each year. In response to a FOIA request, the FBI reported that 5,807 illegal purchasers acquired guns through the Charleston Loophole that later had to be retrieved by law enforcement between January 1 and November 12, 2020. That's more than any other entire calendar year.<sup>5</sup> These transfers are happening in Vermont—over the last few years, 28 guns were sold to illegal purchasers that have to be retrieved by law enforcement.<sup>6</sup> And because ATF agents are responsible for retrieving these guns, it's their lives that are placed in jeopardy by having to go into potentially dangerous situations to recover guns that never should have been sold to begin with.

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<sup>1</sup> <https://www.everytown.org/solutions/close-the-charleston-loophole/>

<sup>2</sup> Vt. Stat. Ann. tit. 13, § 4019

<sup>3</sup> FBI Press Release, Statement by FBI Director James Comey Regarding Dylann Roof Gun Purchase, July 10, 2015, <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-comey-regarding-dylann-roof-gun-purchase>

<sup>4</sup> <https://everytownresearch.org/map/what-states-have-addressed-the-charleston-loophole/>

CA, CO, CT, DE, DC, FL, HI, IL, MD, MA, MN, NJ, NY, NC, PA, RI, TN, UT, VA, WA, WI. These provisions take a variety of forms, including (1) laws that explicitly prohibit or delay a gun transfer if a background check is incomplete, (2) purchase permit systems that give authorities longer time periods to evaluate applications, and (3) statutory waiting periods on gun transfers.

<sup>5</sup> [https://everytownresearch.org/documents/2021/02/2021-0075-final-response-packet- atf\\_ everytown\\_redacted.pdf/](https://everytownresearch.org/documents/2021/02/2021-0075-final-response-packet- atf_ everytown_redacted.pdf/)

<sup>6</sup> Testimony of Jeffrey Wallin, Director of the Vermont Crime Information Center, before the Vermont House Judiciary Committee on 1/13/2022, [https://www.youtube.com/watch?v=HLKeXY\\_031I&t=34s](https://www.youtube.com/watch?v=HLKeXY_031I&t=34s)



Lengthening the background check period to thirty days effectively ensures that no one can evade Vermont's background check law and purchase a firearm without passing a background check. This is because under ATF regulations, a NICS background check is only valid for 30 days before it must be re-initiated.<sup>7</sup> For exactly this reason, several of the states that have passed legislation addressing the Charleston Loophole have, by design, chosen 30 days as their "default proceed" period to ensure that no one receives a firearm without passing a background check.<sup>8</sup>

This legislation will not unduly burden law-abiding gun purchasers. Nearly 90% of all background checks are completed within minutes and 97% are completed within three days.<sup>9</sup> Very few people that are legally able to purchase a firearm will have a background check that takes longer than three days. And those that take longer than three days will be able to purchase a firearm once the background check is completed. In the extremely rare instances where a person experiences repeated delays, the FBI has a process to rectify the issue.<sup>10</sup> But we should be particularly concerned about background checks that take longer than three days because these cases are **four times more likely** to result in a denial.<sup>11</sup>

This law will stop many prohibited people from obtaining firearms. It will help protect victims of abuse and also protect the lives and resources of law enforcement. And importantly, it will close a gap in the law that undermines your existing efforts to protect Vermonters by ensuring guns are sold only to people legally able to possess them.

Thank you very much for the opportunity to testify in support of this important legislation.

Sincerely,  
Alison Shih  
Counsel, Everytown for Gun Safety

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<sup>7</sup> 27 CFR 478.102; <https://www.atf.gov/firearms/ga/how-long-nics-check-valid>

<sup>8</sup> These states include Illinois, New York, Maryland, and New Jersey.

<sup>9</sup> Everytown for Gun Safety Support Fund, "Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19," December 10, 2020, <https://everytownresearch.org/report/background-check-loopholes/>.

<sup>10</sup> FBI Appeals and VAF FAQ: "I Have Been Denied a Firearm Multiple Times or Experience Delays – What Should I Do?"; <https://www.fbi.gov/services/cjis/nics/national-instant-criminal-background-check-system-nics-appeals-vaf>

<sup>11</sup> Everytown for Gun Safety Support Fund, "How COVID-19 Has Made a Federal Background Check Loophole Even Deadlier," April 13, 2020, <https://everytownresearch.org/report/covid-background-check-loophole/>; Everytown for Gun Safety Support Fund, "Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19," December 10, 2020, <https://everytownresearch.org/report/background-check-loopholes/>; Joshua Eaton, "FBI Never Completes Hundreds of Thousands of Gun Checks," *Virgin Island Daily News*, December 4, 2019, <https://bit.ly/2Cit56Z>