

115TH CONGRESS
2D SESSION

S. 2386

To provide additional protections for our veterans.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2018

Mr. GRASSLEY (for himself, Mr. MANCHIN, and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To provide additional protections for our veterans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Second
5 Amendment Rights Restoration Act of 2018”.

6 **SEC. 2. ADDITIONAL PROTECTIONS FOR OUR VETERANS.**

7 (a) IN GENERAL.—Chapter 55 of title 38, United
8 States Code, is amended by adding at the end the fol-
9 lowing new section:

1 **“§ 5511. Conditions for treatment of certain persons**
2 **as adjudicated mentally incompetent for**
3 **certain purposes**

4 “(a) IN GENERAL.—(1) Beginning on the date of en-
5 actment of this section, in any case arising out of the ad-
6 ministration by the Secretary of laws and benefits under
7 this title, the Secretary shall not determine a person to
8 be adjudicated as a mental defective under subsection
9 (d)(4) or (g)(4) of section 922 of title 18 unless the Fed-
10 eral Government has met the burden of proving, by clear
11 and convincing evidence, that the person is a danger to
12 self or others.

13 “(2) The process to determine whether such person
14 is a danger to self or others, as set forth in this section,
15 shall proceed only after the Department has determined
16 that a person requires the assignment of a fiduciary due
17 to a finding of mental incompetency.

18 “(3) A person who is subject to the process set forth
19 in this section that may result in a finding that he or she
20 is a danger to self or others shall be provided formal notice
21 and a process by which to challenge the Federal Govern-
22 ment’s position, and shall be provided written notice of
23 the effect of the ruling with respect to their ability to own
24 and possess firearms and the protections granted under
25 this section.

1 “(b) DETERMINATION OF DANGEROUSNESS.—(1)
2 The process by which a person may be determined to be
3 a danger to self or others shall be initiated, with the excep-
4 tion of those persons described in subsection (i)(1), only
5 after the Department has determined that a person re-
6 quires the assignment of a fiduciary due to a finding of
7 mental incompetency and if the Department has a reason-
8 able basis based on articulable facts that a person may
9 be a danger to self or others. After such reasonable basis
10 is found, the Department may then proceed to formally
11 determine, based on clear and convincing evidence, wheth-
12 er such person is a danger to self or others for purposes
13 of reporting to the National Instant Criminal Background
14 Check System.

15 “(2) FACTORS TO CONSIDER IN THE COURSE OF DE-
16 TERMINING A REASONABLE BASIS.—In analyzing whether
17 a reasonable basis exists that a person is a danger to self
18 or others, the Department may consider all records re-
19 viewed in the course of assigning a fiduciary. Once that
20 reasonable basis is found to exist, the Department may
21 then proceed to formally determine, based on clear and
22 convincing evidence, whether a person is a danger to self
23 or others for purposes of reporting to the National Instant
24 Criminal Background Check System.

1 “(3) FACTORS TO CONSIDER IN THE COURSE OF DE-
2 TERMINING WHETHER A PERSON IS A DANGER TO SELF
3 OR OTHERS.—

4 “(A) In analyzing whether a person is a danger
5 to self or others, the Department may consider all
6 records reviewed in the course of assigning a fidu-
7 ciary and a person’s existing medical records.

8 “(B) In analyzing whether a person is a danger
9 to self or others, the Department may consider a
10 current statement from the beneficiary’s primary-
11 health physician assessing the beneficiary’s current
12 and past (5-year period preceding the initiation of
13 this process) mental health status, specifically
14 whether the beneficiary has ever been a danger to
15 self or others. A statement shall be considered cur-
16 rent if it is based upon an assessment conducted
17 during the 90-day period immediately preceding the
18 initiation of the Medical Review.

19 “(C) In analyzing whether a person is a danger
20 to self or others, the Department may consider the
21 beneficiary’s reputation, as provided in statements
22 and other evidence relating to the beneficiary. These
23 statements must identify the person supplying the
24 information; provide the person’s complete contact
25 information, to include a current address and tele-

1 phone number; and describe the person's relation-
2 ship with the beneficiary and frequency of contact.
3 Specifically, the person providing such a statement
4 shall indicate whether the beneficiary has a reputa-
5 tion for violence and explain why the beneficiary is
6 a danger to self or others.

7 “(D) In analyzing whether a person is a danger
8 to self or others, the Department may consider other
9 factors reasonably bearing on whether such person is
10 a danger to self or others.

11 “(E) If after review of evidence acquired in
12 paragraph (3) the Department finds based on clear
13 and convincing evidence that a person is a danger to
14 self or others, the Department shall proceed to sub-
15 section (c) to initiate a formal process to notify such
16 person.

17 “(4) If a conclusion by the Department that a person
18 is a danger to self or others is not made in accordance
19 with paragraphs (1) through (3), the Federal Government
20 shall not begin the process to find that such person is a
21 danger to self or others.

22 “(c) PROCESS.—If a conclusion that a person is a
23 danger to self or others is made under subsection (b), not
24 later than 30 days after that date on which such conclu-
25 sion is made, the Department shall provide notice to the

1 person, in writing, of the medical finding, the rights and
2 protections afforded by this section, and the effect of a
3 future administrative or judicial ruling with respect to the
4 ability of the person to own and possess firearms.

5 “(d) ADMINISTRATIVE REVIEW.—(1)(A) Except as
6 provided in subsection (i), not later than 60 days after
7 the date on which a person described in subsection (a) re-
8 ceives notice of the pendency of the Federal Government
9 action to determine whether or not such person is a danger
10 to self or others, such person may request a review by
11 the board designed or established under paragraphs (2)
12 and (3) or a court of competent jurisdiction to determine
13 whether such person is a danger to self or others.

14 “(B) If such person does not specify a forum, the
15 Federal Government shall choose the forum.

16 “(C) In such assessment, the board may consider the
17 person’s honorable discharge or decoration and other miti-
18 gating factors reasonably bearing on whether such person
19 is a danger to self or others.

20 “(2) Not later than 120 days after the date of enact-
21 ment of this section, the Secretary shall designate or es-
22 tablish a board that shall, upon request of a person under
23 subsection (a), make a determination after both parties
24 have presented their case as to whether a person is a dan-
25 ger to self or others.

1 “(3) The board shall consist of three individuals, who
2 shall either be retired Federal or State judges in good
3 standing or administrative law judges appointed under
4 section 3105 of title 5, United States Code, in good stand-
5 ing, for a term of two years each and a majority decision
6 shall control.

7 “(4) A determination by the board designated or es-
8 tablished under paragraph (2) or by a court of competent
9 jurisdiction that a person does not meet the standard
10 under subsection (f) shall preclude the Secretary from re-
11 porting such person to the National Instant Criminal
12 Background Check System for the purpose of prohibiting
13 the acquisition, receipt, transfer, shipment, transpor-
14 tation, or possession of firearms or ammunition.

15 “(5)(A) Not later than 90 days after the date on
16 which the person or Federal Government chooses the ad-
17 ministrative review process, the board shall make a deter-
18 mination.

19 “(B) If the board does not make a determination
20 within the required 90-day period, the Secretary shall not
21 report the person to the National Instant Criminal Back-
22 ground Check System for the purpose of prohibiting the
23 acquisition, receipt, transfer, shipment, transportation, or
24 possession of firearms or ammunition.

1 “(e) JUDICIAL REVIEW.—(1) Not later than 45 days
2 after the date on which an assessment of a person under
3 subsection (d) is made, such person or the Federal Gov-
4 ernment may file a petition for judicial review of the
5 board’s determination with a court of competent jurisdic-
6 tion.

7 “(2) A court shall review a case under paragraph (1)
8 de novo.

9 “(f) BURDEN OF PROOF.—The burden of proof for
10 all actions arising under this section shall be on the Fed-
11 eral Government to prove, based on clear and convincing
12 evidence, that a person is a danger to self or others and
13 such burden shall be met before the person may be adju-
14 dicated as a mental defective under subsection (d)(4) or
15 (g)(4) of section 922 of title 18.

16 “(g) EMERGENCY ORDER.—(1)(A) In the case of a
17 person who the Secretary believes may be an imminent
18 danger to self or others, the Secretary may file an emer-
19 gency petition in a court of competent jurisdiction to seek
20 a temporary order prohibiting the acquisition, receipt,
21 transfer, shipment, transportation, or possession of fire-
22 arms or ammunition, if the Secretary has already trans-
23 mitted the notification letter described in subsection (c).

24 “(B) The court in which an action is filed under sub-
25 paragraph (A) may, if the court finds probable cause ex-

1 ists that a person is an imminent danger to self or others,
2 grant such petition.

3 “(C) The Secretary shall submit to the court the in-
4 formation and documents, in unredacted form, that sup-
5 port the Secretary’s position.

6 “(2) Except as provided in paragraph (3), an emer-
7 gency order issued under this subsection shall expire on
8 the earlier of—

9 “(A) the date that is 90 days after the date on
10 which the order is issued; or

11 “(B) the date on which a determination is made
12 by the board established under subsection (d)(2) or
13 a court of competent jurisdiction as to whether the
14 person is a danger to self or others.

15 “(3) The court may, in its discretion, extend an order
16 issued under this subsection for not more than 30 days.

17 “(h) REGULATORY CHANGES.—Consistent with the
18 requirements imposed under this section, the Secretary
19 shall review all relevant regulations and revise such regula-
20 tions as necessary.

21 “(i) PERSONS WITH EXISTING RECORDS.—(1) For
22 persons with existing records in the National Instant
23 Criminal Background Check System database supplied by
24 the Secretary as of the date of enactment of this section,
25 not later than 90 days after such date of enactment, the

1 Secretary shall provide written notice of the opportunity
2 for administrative review or judicial review consistent with
3 this section.

4 “(2) Each person described in paragraph (1) may,
5 at any time, request administrative review under sub-
6 section (d) or judicial review by a court of competent juris-
7 diction to challenge the placement of the person in the
8 National Instant Criminal Background Check System
9 database consistent with the procedures and standards set
10 forth in this section.

11 “(3) In an action under this subsection, the failure
12 of the Federal Government to prove, based on clear and
13 convincing evidence, that a person is a danger to self or
14 others consistent with the procedures in this section shall
15 result in the removal of such person’s information from
16 the National Instant Criminal Background Check System
17 database.

18 “(j) NEW AND MATERIAL EVIDENCE.—A person or
19 the Federal Government may reopen a finally adjudicated
20 case by submitting new and material evidence consistent
21 with this section.

22 “(k) DEFINITIONS.—In this section—

23 “(1) the term ‘court of competent jurisdiction’
24 means the district court of the United States for the

1 district in which the person who is subject to the as-
 2 sessment or determination resides; and

3 “(2) the term ‘danger to self or others’ means,
 4 in relation to a person, the person is likely to use,
 5 carry, or possess a firearm in a manner dangerous
 6 to himself or the public due to mental illness, condi-
 7 tion, or disease.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 at the beginning of chapter 55 of such title is amended
 10 by adding at the end the following new item:

“5511. Conditions for treatment of certain persons as adjudicated mentally in-
 competent for certain purposes.”.

11 (c) APPLICABILITY.—

12 (1) DETERMINATIONS BEFORE DATE OF EN-
 13 ACTMENT.—Section 5511 of title 38, United States
 14 Code, as added by subsection (a), shall apply with
 15 respect to all persons who are determined by the
 16 Secretary of Veterans Affairs to be mentally incom-
 17 petent as of the date of enactment of this Act.

18 (2) DETERMINATIONS AFTER DATE OF ENACT-
 19 MENT.—After the date of enactment of this Act, in
 20 any case arising out of the administration by the
 21 Secretary of laws and benefits under title 38, United
 22 States Code, for persons determined to be a danger
 23 to self or others, such determination shall be made

1 consistent with section 5511 of title 38, United
2 States Code, as added by subsection (a).

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