

VETERANS 2ND AMENDMENT PROTECTION ACT

SEPTEMBER 16, 2024.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BOST, from the Committee on Veterans’ Affairs,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 705]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 705) to amend title 38, United States Code, to prohibit the Secretary of Veterans Affairs from transmitting certain information to the Department of Justice for use by the national instant criminal background check system, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 705, the “Veterans 2nd Amendment Protection Act,” was introduced by Rep. Mike Bost of Illinois on February 1, 2023. The bill would prohibit the Secretary of the Department of Veterans Affairs (VA) from transmitting information of a veteran or a beneficiary of VA benefits to the National Instant Criminal Background Check System (NICS) on the basis that VA has appointed them a fiduciary to help them manage their VA benefits, unless there is an order or finding of a judicial authority that such veteran or beneficiary is a danger to themselves or others.

BACKGROUND AND NEED FOR LEGISLATION

Section 1: Short Title

This Act may be cited as the “Veterans 2nd Amendment Protection Act.”

Section 2: Prohibition on Secretary of Veterans Affairs Transmittal of Certain Information to the Department of Justice for Use by the National Instant Criminal Background Check System

The *Gun Control Act of 1968* (Pub. L. 90–617) (Gun Control Act) makes it illegal for persons “adjudicated as a mental defective” to ship, transport, possess, or receive firearms and ammunition. The *Brady Handgun Violence Prevention Act* (Pub. L. 103–159) (Brady Act), enacted on November 30, 1993, established the National Instant Criminal Background Check System (NICS), a computer system used to record information about individuals not eligible to transfer, receive, or possess firearms and ammunition. The Brady Act requires federally licensed gun dealers to use NICS to conduct a background check on any person attempting to purchase a firearm, and federal agencies are required to report to the Department of Justice (DOJ), for inclusion in NICS, information of individuals who have been “adjudicated as a mental defective”.¹

VA appoints fiduciaries for beneficiaries of VA benefits, including veteran beneficiaries, who are unable to manage their VA benefits on their own as a result of a disability. Fiduciaries receive payments of VA funds on behalf of those beneficiaries and disburse those funds for the beneficiaries’ care and support. VA will appoint a fiduciary for a person who a VA career employee in the Veterans Benefits Administration (VBA) determines is “mentally incompetent.” VA defines “mentally incompetent” in its regulation 38 C.F.R. § 3.353(a) as a person “who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.”

Congress did not define the term “adjudicated as a mental defective” in the Gun Control Act or the Brady Act. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) promulgated a regulation defining the term “adjudicated as a mental defective” as “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence,

¹ NICS Improvement Amendments Act of 2007 (Pub. L. 110–180); 18 U.S.C. § 922.

or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.” 27 C.F.R. § 478.11. VA and ATF interpreted the statutory term “adjudicated as a mental defective” as including persons who satisfy VA’s regulatory definition of “mentally incompetent.”²

As a result, for decades VA has reported to the DOJ for inclusion in NICS information of veterans and other VA beneficiaries whom a VA bureaucrat has determined to be “mentally incompetent” without a ruling by a judge or magistrate. The determination of whether a veteran is “mentally incompetent” is made by a VA bureaucrat based on a statement from a medical professional that the veteran is unable to handle their VA compensation as a result of a disability. The Committee understands that these statements do not indicate one way or the other whether the person’s disability causes them to be a danger to themselves or others. In other words, for decades VA bureaucrats have stripped over 250,000 veterans of their Constitutional right to bear arms simply because they need assistance from a fiduciary to handle their VA financial compensation benefits.³

Further, before VA sends their name to NICS, a veteran can only dispute VA’s proposed determination of mental incompetency under 38 C.F.R. §§ 3.101, 3.353 by proving that they are able to handle their finances. A veteran receiving VA compensation may or may not wish to receive assistance from a VA-appointed fiduciary to help them manage their compensation, but that is a separate issue from whether they may wish to retain their Constitutional right to bear arms. Only after VA has already determined them mentally incompetent to handle their VA financial benefits, does a veteran have a separate opportunity to petition VA for relief from their name being in NICS, but the burden falls on the veteran to prove to a VA bureaucrat that they are not a danger to themselves or others.⁴ The Committee is concerned that veterans with fiduciaries do not have the same Constitutional due process rights as civilians whom a judge, in a court of law, might find that that civilian is a danger to themselves or others and therefore should have their name transmitted for use in NICS.

To address this issue, this section would prohibit VA from transmitting information to the DOJ for use by NICS of a person solely because VA has determined that a person requires a fiduciary to help them manage their VA benefits, without an order or finding of a judge, magistrate, or other judicial authority, that the person is a danger to themselves or others.

The Committee believes that this section is critical to protect the Constitutional due process rights of veterans. This change would also ensure that veterans are not subject to different rules and NICS reporting standards compared to civilians simply because those veterans require a fiduciary to help them manage their VA financial compensation benefits.

² ATF, “Definitions for the Categories of Persons Prohibited from Receiving Firearms,” 62 Federal Register 34,637, 34,637 (June 27, 1997).

³ Active Entries in the NICS Indices by State (January 3, 2023), <https://www.fbi.gov/file-repository/active-entries-in-the-nics-indices-by-state.pdf/view>.

⁴ Congressional Research Service, *Gun Control, Veterans’ Benefits, and Mental Incompetency Determinations* (July 14, 2023), <https://crsreports.congress.gov/product/pdf/R/R47626>.

HEARINGS

On July 18, 2023, the Committee on Veterans Affairs held a legislative hearing on H.R. 705 and other bills that were pending before the committee.

The following witnesses testified:

Mr. Ronald S. Burke Jr., Deputy Under Secretary, Policy & Oversight, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Kevin Friel, Deputy Director, Pension & Fiduciary Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. David J. Barrans, Chief Counsel, Benefits Law Group, Office of General Counsel, U.S. Department of Veterans Affairs; Dr. Jeffery Swanson, Professor in Psychiatry & Behavioral Sciences, Duke University School of Medicine; Bob “Shoebob” Carey, Captain, U.S. Navy (Ret), Chairman and Chief Bottle Washer, National Defense Committee; Mr. Cole T. Lyle, Executive Director, Mission Role Call; Ms. Kristina Keenan, Deputy Director for National Legislative Services, Veterans of Foreign Wars of the United States.

COMMITTEE CONSIDERATION

On May 1, 2024, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 705 be reported favorably to the House of Representatives by a recorded vote of 13–10. During consideration of the bill, the following amendments were considered:

An amendment to H.R. 705 was offered by Rep. Cherfilus-McCormick to create an exception under H.R. 705 for a beneficiary who has been diagnosed with schizophrenia, traumatic brain injury, post-traumatic stress disorder, bipolar disorder, or dementia. The amendment was not agreed to by a recorded vote of 8 yeas and 11 nays.

An amendment to H.R. 705 was offered by Rep. McGarvey to require the U.S. Court of Appeals for Veterans Claims (Court) be the judicial body that would issue an order or finding that a person is a danger to themselves or others and that would establish expedited procedures for making such orders or findings. The amendment was not agreed to by a recorded vote of 10 yeas and 11 nays.

An amendment to H.R. 705 was offered by Rep. Crane to require VA to notify the U.S. Attorney General pursuant to 34 U.S.C. § 40901(e)(1)(D) that the basis of any transmittal of information of a veteran with a fiduciary to NICS was incorrect and never applied. The amendment was not agreed to by a recorded vote of 9 yeas and 13 nays.

Another amendment to H.R. 705 was offered by Rep. Crane to prohibit a VA officer or employee from initiating, utilizing, or participating in any procedures relating to a state gun confiscation law. The amendment was not agreed to by a recorded vote of 10 yeas and 12 nays.

An amendment to H.R. 705 was offered by Rep. Ramirez to require VA, in partnership with an academic institution, to conduct a study, and report to Congress on such study, on any impediments to VA obtaining extreme risk protection orders to temporarily prohibit veterans who may be a danger to them-

selves or others from purchasing, possessing, or transporting a firearm. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Ramirez to require the U.S. Comptroller General to conduct a study, and report to Congress on such study, on the extent to which VA contractor employees who perform compensation and pension examinations accurately and consistently complete the mental competency section of disability benefits questionnaires while performing such examinations. This amendment would require such study to examine the training provided to such contracted employees; identify and evaluate any additional training VA contractors provide to such employees, and identify and evaluate any such training, and identify and evaluate any training provided to VA employees who evaluate medical evidence for mental competency determinations. This amendment would also prohibit the underlying bill from taking effect until after the report on the study is submitted to Congress. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Mrvan to prohibit the underlying bill from taking effect until after the Secretary submits to Congress certification in writing that the implementation of H.R. 705 will not lead to an increase in the rate of death by suicide using a firearm among veterans who have VA assigned fiduciaries. The amendment was not agreed to by a recorded vote of 10 yeas and 12 nays.

An amendment to H.R. 705 was offered by Rep. Brownley to require the Secretary, in coordination with the Assistant Secretary of Health and Human Services for Mental Health and Substance Abuse, to conduct a study, and report to Congress on such study, on the long-term mental health outcomes and prevalence of suicidal ideation and identification as “dangerous” among the population of veterans who have a VA appointed fiduciary. This amendment would also prohibit the underlying bill from taking effect until after the report on the study is submitted to Congress. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Budzinski to require VA to carry out a study, and report to Congress on such study, on the factors contributing to the stigma around seeking VA mental health care and other barriers to seeking VA mental healthcare. This amendment would also require VA to create and conduct an outreach campaign to counter stigma around seeking VA mental health care based on the study’s findings. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Landsman to require the Secretary, in coordination with the Attorney General, to determine, and report to Congress on, the number of veterans with VA appointed fiduciaries (and whose names VA has sent to NICS under the Brady Act) who have attempted to buy a firearm but were prevented for doing so because their name was on NICS and how many veterans with VA appointed fiduciaries that have had a firearm confiscated by a State or Federal entity. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Levin to require VA to carry out a study, and submit a report to Congress on such study, on the extent to which beneficiaries have appealed or requested relief with respect to the transmittal of identifiable information to NICS and which beneficiaries have not appealed to such transmittal of information and why. This amendment would also prohibit the underlying bill from taking effect until after the report on such study is submitted to Congress. The amendment was not agreed to by a voice vote.

An amendment to H.R. 705 was offered by Rep. Deluzio to allow VA, as part of the Veterans Justice Outreach Program, to support university law school programs that provide legal assistance to veterans, including university law school programs that represent veterans in their appeals before VA related to the appointment of fiduciaries, that assist veterans with filing and appealing claims for VA benefits, and that assist veterans with other civil, criminal, and family legal matters as the Secretary considers appropriate. This amendment would also authorize appropriations of \$10 million per year for fiscal years 2025–2029. The amendment was not agreed to by a voice vote.

An amendment in the nature of substitute to H.R. 705 was offered by Ranking Member Takano to change the short title of the bill to “Veterans 2nd Amendment Protection and Lethal Means Safety Training Act” and to require VA, when determining whether a veteran is mentally competent to handle their VA funds, to make an additional determination as to whether the veteran is a danger to themselves or others. The amendment would require that determination be based on opinion(s) from a licensed mental health professional. The amendment would also prohibit VA from sending a beneficiary’s name to NICS if it is determined that such person is not a danger to themselves or others, but would allow VA in such cases to determine that a beneficiary is not mentally competent to manage their VA benefits. Additionally, the amendment would mandate additional lethal means safety, suicide prevention and safe storage and handling training for VA employees or contractors who regularly interact with veterans, community care providers, and caregivers. The amendment was not agreed to by a recorded vote of 10 yeas and 12 nays.

A motion by Rep. Bergman to report H.R. 705 favorably to the House of Representatives was agreed to by a recorded vote of 13 yeas and 10 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto.

An amendment to H.R. 705 offered by Representative Cherfilus-McCormick was not agreed to by a recorded vote of 8 yeas and 11 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Cherfilus-McCormick Amendment

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman		X	
Nancy Mace		X	
Matt Rosendale		X	
Mariannette Miller-Meeks			
Greg Murphy			
Scott Franklin		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani			
Eli Crane		X	
Keith Self		X	
Jen Kiggans		X	
Mark Takano	X		
Julia Brownley	X		
Mike Levin	X		
Chris Pappas	X		
Frank Mrvan			
Sheila Cherfilus-McCormick	X		
Chris Deluzio			
Morgan McGarvey	X		
Delia Ramirez	X		
Greg Landsman			
Nikki Budzinski	X		
Total	8	11	

Chris Deluzio

Mariannette Miller-Meeks				Mariannette Miller-Meeks
Greg Murphy				Greg Murphy
Scott Franklin		X		Scott Franklin
Derrick Van Orden		X		Derrick Van Orden

An amendment to H.R. 705 offered by Representative McGarvey was not agreed to by a recorded vote of 10 yeas and 11 nays. The names of Members voting for and against follow:

Date: **Wednesday, May 1, 2024**
Subject: **Approval of McGarvey Amendment**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman		X	
Nancy Mace		X	
Matt Rosendale		X	
Mariannette Miller-Meeks			
Greg Murphy			
Scott Franklin		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani			
Eli Crane		X	
Keith Self		X	
Jen Kiggans		X	
Mark Takano	X		
Julia Brownley	X		
Mike Levin	X		
Chris Pappas	X		
Frank Mrvan	X		
Sheila Cherfilus-McCormick	X		
Chris Deluzio	X		
Morgan McGarvey	X		
Delia Ramirez	X		
Greg Landsman			
Nikki Budzinski	X		
Total	10	11	

An amendment to H.R. 705 offered by Representative Crane was not agreed to by a recorded vote of 9 yeas and 13 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Crane Amendment #1

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman	X		
Nancy Mace	X		
Matt Rosendale	X		
Mariannette Miller-Meeks	X		
Greg Murphy			
Scott Franklin	X		
Derrick Van Orden		X	
Morgan Luttrell	X		
Juan Ciscomani			
Eli Crane	X		
Keith Self	X		
Jen Kiggans	X		
Mark Takano		X	
Julia Brownley		X	
Mike Levin		X	
Chris Pappas		X	
Frank Mrvan		X	
Sheila Cherfilus-McCormick		X	
Chris Deluzio		X	
Morgan McGarvey		X	
Delia Ramirez		X	
Greg Landsman			
Nikki Budzinski		X	
Total	9	13	

Another amendment to H.R. 705 offered by Representative Crane was not agreed to by a recorded vote of 10 yeas and 12 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Crane Amendment #2

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman	X		
Nancy Mace	X		
Matt Rosendale	X		
Mariannette Miller-Meeks	X		
Greg Murphy			
Scott Franklin	X		
Derrick Van Orden	X		
Morgan Luttrell	X		
Juan Ciscomani			
Eli Crane	X		
Keith Self	X		
Jen Kiggans	X		
Mark Takano		X	
Julia Brownley		X	
Mike Levin		X	
Chris Pappas		X	
Frank Mrvan		X	
Sheila Cherfilus-McCormick		X	
Chris Deluzio		X	
Morgan McGarvey		X	
Delia Ramirez		X	
Greg Landsman			
Nikki Budzinski		X	
Total	10	12	

An amendment to H.R. 705 offered by Representative Mrvan was not agreed to by a recorded vote of 10 yeas and 12 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Mrvan Amendment

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman		X	
Nancy Mace		X	
Matt Rosendale		X	
Mariannette Miller-Meeks		X	
Greg Murphy			
Scott Franklin		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani			
Eli Crane		X	
Keith Self		X	
Jen Kiggans		X	
Mark Takano	X		
Julia Brownley	X		
Mike Levin	X		
Chris Pappas	X		
Frank Mrvan	X		
Sheila Cherfilus-McCormick	X		
Chris Deluzio	X		
Morgan McGarvey	X		
Delia Ramirez	X		
Greg Landsman			
Nikki Budzinski	X		
Total	10	12	

An amendment in the nature of a substitute to H.R. 705 offered by Ranking Member Takano was not agreed to by a recorded vote of 10 yeas and 12 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Takano Amendment in Nature of
Substitute

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Amata Coleman Radewagen		X	
Jack Bergman		X	
Nancy Mace		X	
Matt Rosendale		X	
Mariannette Miller-Meeks		X	
Greg Murphy			
Scott Franklin		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani			
Eli Crane		X	
Keith Self		X	
Jen Kiggans		X	
Mark Takano	X		
Julia Brownley	X		
Mike Levin	X		
Chris Pappas	X		
Frank Mrvan	X		
Sheila Cherfilus-McCormick	X		
Chris Deluzio	X		
Morgan McGarvey	X		
Delia Ramirez	X		
Greg Landsman			
Nikki Budzinski	X		
Total	10	12	

Final passage of H.R. 705 was agreed to by a recorded vote of 13 yeas and 10 nays. The names of Members voting for and against follow:

ONE HUNDRED AND EIGHTEENTH CONGRESS
U.S. STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
MIKE BOST, CHAIRMAN

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Wednesday, May 1, 2024
Subject: Approval of Final Passage of HR 705

NAME	YEA/AYE	NAY/NO	Present
Mike Bost	X		
Amata Coleman Radewagen	X		
Jack Bergman	X		
Nancy Mace	X		
Matt Rosendale	X		
Mariannette Miller-Meeks	X		
Greg Murphy			
Scott Franklin	X		
Derrick Van Orden	X		
Morgan Luttrell	X		
Juan Ciscomani	X		
Eli Crane	X		
Keith Self	X		
Jen Kiggans	X		
Mark Takano		X	
Julia Brownley		X	
Mike Levin		X	
Chris Pappas		X	
Frank Mrvan		X	
Sheila Cherfilus-McCormick		X	
Chris Deluzio		X	
Morgan McGarvey		X	
Delia Ramirez		X	
Greg Landsman			
Nikki Budzinski		X	
Total	13	10	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of H.R. 705 are to ensure that veterans and their families can access their VA benefits without any violation of their Constitutional rights.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 705 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the Congressional Budget Office cost estimate on this measure.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 705, Veterans 2nd Amendment Protection Act			
As ordered reported by the House Committee on Veterans' Affairs on May 1, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>not direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 705 would prohibit the Department of Veterans Affairs (VA) from reporting certain information to the Department of Justice for use in the National Instant Criminal Background Check System (NICS). That system is used by licensed firearms dealers to determine whether a person can legally purchase a firearm.

Under current law, VA appoints fiduciaries to manage benefits for people who have been determined unable to manage benefits on their own. In some cases, VA reports that information to the NICS. As a result of that reporting, a person may be determined to be ineligible to purchase a firearm. (The Consolidated Appropriations

Act, 2024, prohibits the department from making such reports in the current fiscal year.)

Under the bill, VA would be prohibited from transmitting information to the NICS about a person solely because a fiduciary manages their VA benefits. The department could make such a report, however, if a judge determines that the person poses a danger to themselves or others.

CBO estimates that implementing the bill could reduce administrative costs by decreasing VA's reporting to the NICS. Conversely, VA could incur additional costs for seeking judicial determinations that a person poses a danger and should be reported to the NICS. CBO estimates that, in either case, the net change in spending would not be significant. Any related spending would be subject to appropriation.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Christina Hawley Anthony, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4 is inapplicable to H.R. 705.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 705.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 705 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 705 would establish or reauthorize a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 would establish the short title of the bill as the "Veterans 2nd Amendment Protection Act".

Section 2. Prohibition on Secretary of Veterans Affairs Transmittal of certain information to the Department of Justice for use by the National Instant Criminal Background Check System

Section 2 would amend Title 38, U.S. Code, Chapter 55, by creating a new section 5501B that would prohibit VA from transmitting to any entity in the Department of Justice, for use by NICS, personally identifiable information of a beneficiary of VA benefits for whom VA has assigned a fiduciary to assist with their VA benefits under 38 U.S.C. § 5502, unless there is an order or finding of a judge, magistrate, or other judicial authority, that such beneficiary is a danger to themselves or others.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.

5501. Commitment actions.

* * * * *

5501B. *Prohibition on transmittal of certain information to the Department of Justice for use by the national instant criminal background check system.*

* * * * *

§5501B. *Prohibition on transmittal of certain information to the Department of Justice for use by the national instant criminal background check system*

The Secretary may not transmit to any entity in the Department of Justice, for use by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act, personally identifiable information of a beneficiary, solely on the basis of a determination by the Secretary to pay benefits to a fiduciary for the use and benefit of the bene-

ficiary under section 5502 of this title, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.

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MINORITY VIEWS

On May 1, 2024, the full House Committee on Veterans' Affairs met in open markup and considered H.R. 705, the *Veterans 2nd Amendment Protection Act*, introduced by Chairman Mike Bost. The measure was ordered favorably reported to the full House on a straight party line vote, with Committee Democrats united in opposition. We view this measure as a dangerous political messaging bill that perpetuates a false narrative that seeking mental healthcare at the Department of Veterans Affairs will lead to confiscation of a veterans' firearms without sufficient due process protections. The problem the bill purports to address is poorly substantiated and its potential effects are poorly understood. The legislation unnecessarily injects great risk of harm to the most vulnerable beneficiaries in the Department of Veterans Affairs' (VA) system. This is unconscionable when the rate of death by suicide among veterans remains significantly higher than that of the general population. Veterans also use firearms in suicide attempts at a rate of 70%, much higher than the 50% rate in the general population.

First, contrary to the assertions of the Majority, this issue is not about undue deprivation of constitutional rights, but about lowering the risk of self-harm and death by suicide among VA beneficiaries. The Fiduciary process serves as an adequate proxy for determination of dangerousness. There is sufficient due process in the current system to protect rights and appeals or requests for relief are not even highly pursued. Veterans are already at higher risk of suicide and self-harm because they tend to concentrate risk factors such as post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), substance abuse disorder, and other addictive personality traits. The result of Chairman Bost's bill will mean more guns in more hands and more veterans will lose their life because of it.

Second, Republicans are non-serious about addressing the issue through sound policymaking, and are relying on emotion, anecdote and political messaging. Significant data gaps exist—data that would be necessary to help bridge anecdotes and evidence related to the Fiduciary Program—this legislation fills none of those gaps. The title alone presages partisanship and belies the fact that this legislation is purely a messaging bill related to the politics of guns and is not about protecting veterans. Democrats prefer a data driven, evidence-based policymaking process, which the Republican work on this abandons.

Concerning the need for this bill as stated by the Majority, the stigma around seeking mental health help for fear of losing 2nd Amendment rights is real and deserves to be addressed in a meaningful way. However, it is part of the broader issue of misinformation and disinformation propagating online and elsewhere. It is a perception issue that the Majority and, unfortunately, many VSOs

are perpetuating, both through this bill and in their failure to denounce the rumors as untrue. In fact, there are documented greater hurdles to seeking care including convenience and cost.

Specifically, with respect to the adequacy of the Fiduciary process as proxy for determining dangerousness, we know from academic research that the population of beneficiaries assigned a fiduciary suffers from mental health conditions that would preclude most of the general population from owning firearms. The most common mental health conditions among beneficiaries with a fiduciary are as follows:

1. Schizophrenia—36.5%
2. TBI—31.2%
3. PTSD—22.3%
4. Bipolar Disorder—5.6%
5. Dementia—4.4%

Moreover, mental incompetency for fiduciary purposes is equivalent to increased suicide risk. Veterans who scored poorly on financial management abilities were about twice as likely to report suicidal ideation and attempts, using illicit drugs, engaging in violent behavior, and getting arrested, compared to those with good management skills. Also rates of suicidality and violence were found to be significantly elevated in veterans who were identified as needing a fiduciary.¹

Regarding the due process protections already built into VA's system in compliance with the Administrative Procedures Act (APA) and the NICS Improvement Amendments Act (NIAA), veterans and other beneficiaries currently have significant avenues for redress. VA notifies beneficiaries of the consequences of their proposed determination, including NICS reporting requirements as required by the APA and the NIAA. They may then appeal both the determination to appoint a fiduciary, and the subsequent reporting to NICS, independently of one another and at several points in the process. Beneficiaries may:

1. Request a pre-decision review of the incompetency decision before it is finalized;
2. Appeal the determination of mental incompetency;
3. File a supplemental claim;
4. Seek a Higher-Level Review;
5. Appeal the incompetency determination to the Board of Veterans Appeals;
6. Seek specific relief from NICS reporting, even after the appointment of a Fiduciary.

Moreover, decisions regarding VA benefits determinations are already able to be appealed to judicial authorities such as the Court of Appeals for Veterans' Claims and the U.S. Court of Appeals for the Federal Circuit. The Majority conveniently ignores those facts when espousing their view that veterans' constitutional rights are being abridged without due process.

We also know from VA reporting that these avenues for appeal are not widely used. In fact, in FY 2022, the most recent year for which there is data, there were only 135 hearings to appeal the in-

¹Swanson, J., Easter, M., Brancu, M. *et al.* Informing Federal Policy on Firearm Restrictions for Veterans with Fiduciaries: Risk Indicators in the Post-Deployment Mental Health Study. *Adm Policy Ment Health* 45, 673–683 (2018). <https://doi.org/10.1007/s10488-018-0881-y>.

competency determination, 24 of which resulted in a competency determination. This is relative to a universe of approximately 15,000 new determinations annually. Also in FY 2022, VA received only 33 relief requests, and granted none. However, in response to these requests, 11 beneficiaries were determined to be competent and were removed from NICS.²

Additionally, it has been asserted that veterans are unfairly being singled out for inclusion in the NICS database, given that VA beneficiaries represent a large proportion of those reported to NICS by federal entities. It should be noted that of the approximately 28.4 million active entries in the FBI's NICS database, roughly 14.6 million of those were submitted by federal agencies. And of that 14.6 million, the vast majority (12.5 million), are unlawful aliens submitted to the database by the Department of Homeland Security. Veterans only make up the largest percentage of those reported to NICS by federal agencies in the category of Adjudicated Mental Health (261,000). So again, the Majority is continuing to perpetuate the myth that somehow veterans are being unduly burdened by this NICS reporting, when the reality is that beneficiaries reported to NICS only constitute only 1.8% of federal reporting and 0.9% of all entries in total database.³

As previously mentioned, there are a large number of unknowns surrounding the Fiduciary Program and its relation to long-term health outcomes. For example:

1. There is very limited information publicly available about the population of veterans deemed to be financially incompetent who have historically been reported to the NICS, and whether they, on average, have elevated rates of suicidality or violence;
2. There is no data on the desire of beneficiaries in the Fiduciary Program to purchase or own firearms;
3. There is no data on why beneficiaries are failing to utilize the due process afforded them in the system already;
4. There is no data on whether a fear of losing 2nd Amendment rights is the major impediment to seeking help, or if other factors are more important.

The response to these unknowns should note be to remove safeguards which may lead to harm, but to gather information that informs policymaking. H.R. 705 fills none of these data gaps. Nor was any of this information gathered prior to this bill's development and introduction.

Accordingly, during the full Committee markup on this measure Committee Democrats offered numerous germane amendments to address all these data insufficiencies. All were summarily rejected on party line votes. Democratic Members offered the following amendments to H.R. 705:

1. Rep. Takano Substitute: Would strike the underlying bill and replace it with language stating that VA cannot report beneficiaries to NICS until obtaining a secondary mental

²Department of Veterans Affairs, Response to House Veterans Affairs Committee—Minority Request for Information, April 20, 2023.

³Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Active Entries in the NICS Indices as of January 3, 2023. <https://www.fbi.gov/file-repository/active-entries-in-the-nics-indices-by-state.pdf/view>.

health determination. The amendment would also require VA to update its Lethal Means Safety and Suicide Prevention training and expand the universe of who must take such training.

2. Rep. Brownley Amendment: Would amend the bill to require a VA study, in conjunction with the Substance Abuse and Mental Health Services Administration, of the fiduciary population regarding long-term mental health outcomes, “dangerousness” and suicidal ideation. One of the many unknowns in this debate is that we do not have good information regarding long-term mental health outcomes of those assigned a fiduciary by VA. This information is especially important as we know veterans are at increased risk of self-harm, a risk that only rises with the presence of exacerbating mental health conditions, like those found in the fiduciary population.

3. Rep. Budzinski Amendment: Would amend the bill to instruct VA to conduct a study to determine factors contributing to stigma around seeking mental healthcare at VA and identify other barriers to seeking care. The amendment would then mandate VA create and conduct an outreach campaign to counter that stigma.

4. Rep. McGarvey Amendment: Would amend the bill to specify which court VA should seek an order from, namely the Court of Appeals for Veterans Claims. The underlying bill is silent on this issue, creating uncertainty for VA. The amendment would also instruct the CAVC to create an expedited channel for consideration of such requests. The CAVC is independent of VA and has expertise in veterans’ law and in interpreting the medical evidence associated with a veterans’ claim. Additionally, given the elevated risk of self-harm among this population, CAVC establishing a fast lane for consideration of these judicial orders would allow VA to quickly establish additional protections for beneficiaries if warranted.

5. Rep. Ramirez Amendment: Would amend the bill to require VA to partner with an academic institution to conduct a study on impediments to VA utilizing/obtaining extreme risk protection orders (ERPO). VA’s NICS reporting in compliance with the Brady Act is fundamentally about preventing harm, either to the veteran or survivor themselves, or to those around them. Unfortunately, this bill ties VA’s hands and prevents them from doing so to the best of their ability. As such, VA must explore other avenues to prevent the kind of harm injected into this system by this bill. One of the methods VA should explore is ERPOs, which have shown to be successful in many locations at preventing suicide and violence.

6. Rep. Ramirez Amendment #2: Would amend the bill to instruct the Government Accountability Office to conduct a study on the accuracy and consistency with which contract Compensation and Pension examiners are filling out the mental competency section of Disability Benefits Questionnaires (DBQ). The study should:

- a. Evaluate the training specific to those sections offered by Medical Disability Exam Office;

b. Identify and evaluate any follow on training the contractor is offering their providers; and

c. Identify and evaluate what specific training claims processors are given related to examining medical evidence for competency determinations.

One of the arguments made as to the necessity of the underlying bill, is that the DBQ is an inadequate measure of a veterans' ability to manage their own affairs because of mental illness or otherwise, and that the contractors or Veterans Health Administration employees filling out that section have reduced it to a box checking activity. While we disagree with that characterization, the reality is that no independent analysis has been conducted specifically on the accuracy of those sections.

7. Rep. Levin Amendment: Would amend the bill to instruct VA to conduct a study to determine why beneficiaries are choosing not to avail themselves of the current avenues for appeal and relief from NICS reporting. The current avenues for administrative relief from both the assignment of a fiduciary and reporting to NICS are not widely used. What is not known, is why. Are beneficiaries not appealing because they don't know they can, feel as though it is futile, or simply don't care? This amendment would require VA to discern those reasons.

8. Rep. Deluzio Amendment: Would amend the bill to establish a new grant program for veterans' legal clinics at institutions of higher learning expressly for the purposes of representing veterans in fiduciary related proceedings and authorize \$10mil/year for 5 years in order to carry out this program. Under the regime created by H.R. 705, VA would be forced to take veterans to court in order to obtain a judicial order if they wish to report that veteran to NICS. It is unclear if VA would do this, however if they do, veterans will inevitably require assistance in defending themselves against VA. In order to prevent bad actors from occupying that space at great cost to the veteran, a space which veterans service organizations also aren't occupying, this amendment proposes expanding support for veterans' legal clinics in order to bolster free services for veterans.

9. Rep. Mrvan Amendment: Would amend the bill to state that it shall not take effect until the Secretary of Veterans' Affairs certifies to Congress that it will not lead to an increase in death by suicide using a firearm among those assigned a fiduciary. H.R. 705 injects a great deal of risk into the system, including the risk of increased death by suicide among veterans and other beneficiaries. At the very least, we must be sure that this bill will not lead to increased veteran suicide before it takes effect.

10. Rep. Cherfilus-McCormick Amendment: Would amend the bill to allow for continued reporting for most serious mental health conditions. These are:

- a. Schizophrenia
- b. TBI
- c. PTSD
- d. Bipolar Disorder
- e. Dementia

We know that H.R. 705 has the potential to put more guns in the hands of the most vulnerable beneficiaries in VA's system. At the very least, we must continue to protect those with the most serious mental impairments, by continuing their reporting to NICS.

11. Rep. Landsman Amendment: Would amend the bill to require VA to partner with the Department of Justice to determine how many veterans have attempted to buy a firearm but were denied because of fiduciary-related NICS reporting, and how many have had already owned firearms confiscated by state or federal authorities. Anecdotally, the Majority has said that there are great numbers of veterans who have been prevented from buying firearms based on the assignment of a fiduciary by VA, and that others are having their firearms confiscated for the same reason. The reality is that we have absolutely no evidence that this is the case. As such, we need to gather evidence to see if the problem the Majority is trying to fix actually exists before proceeding with this legislation.

For these reasons and more, Committee Democrats must continue to oppose this legislation. We will recommend the broader House reject the measure should it come to the floor of the full House for consideration.

MARK TAKANO,
Ranking Member.

