

VETERANS 2ND AMENDMENT PROTECTION ACT

JUNE 5, 2025.—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. 1041]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 1041) 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 with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 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.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by inserting after section 5501A the following new section:

“§ 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 (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541), 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 beneficiary 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.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by inserting after the item relating to section 5501A the following new item:

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

SEC. 3. NOTIFICATION OF LACK OF BASIS FOR THE SECRETARY OF VETERANS AFFAIRS TO HAVE TRANSMITTED CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR USE BY THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) IN GENERAL.—Such chapter (as amended by section 2) is further amended by inserting after section 5501B the following new section:

“§ 5501C. Notification of lack of basis for transmittal of certain information to the Department of Justice for use by the national instant criminal background check system

“The Secretary shall, within 30 days of the enactment of the Veterans 2nd Amendment Protection Act, and in accordance with section 103(e)(1)(D) of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901(e)(1)(D); Public Law 103–159; 107 Stat. 1541), notify the Attorney General that the basis for the transmittal, on or after November 30, 1993, by the Secretary, of 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 beneficiary under section 5502 of this title, 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 (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541), does not apply, or no longer applies.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter (as amended by section 2) is further amended by inserting after the item relating to section 5501B the following new item:

“5501C. Notification of lack of basis for transmittal of certain information to the Department of Justice for use by the national instant criminal background check system.”.

SEC. 4. DETERMINATION BY THE SECRETARY OF VETERANS AFFAIRS THAT A PERSON IS MENTALLY INCOMPETENT IS INSUFFICIENT TO TREAT SUCH PERSON AS A MENTAL DEFECTIVE.

(a) IN GENERAL.—Such chapter (as amended by sections 2 and 3) is further amended by inserting after section 5501C the following new section:

“§ 5501D. Determination of mental incompetence is insufficient basis to treat a person as a mental defective

“The Secretary shall not treat a person as having been adjudicated as a mental defective solely on the basis that the Secretary has determined that such person—

“(1) is mentally incompetent under section 3.353 of title 38, Code of Federal Regulations (or successor regulation); or

“(2) requires a fiduciary under section 5502 of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter (as amended by sections 2 and 3) is further amended by inserting after the item relating to section 5501C the following new item:

“5501D. Determination of mental incompetence is insufficient basis to treat a person as a mental defective”.

Amend the title so as to read:

A bill 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, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1041, the “Veterans 2nd Amendment Protection Act,” was introduced by Representative Mike Bost of Illinois on February 6, 2025. The bill, as amended, would prohibit the Secretary of the Department of Veterans Affairs (VA) from transmitting the name and information of a veteran or a beneficiary of VA benefits to the National Instant Criminal Background Check System (NICS) solely on the basis that VA has appointed them a fiduciary to help them manage their VA benefits, unless there is an order or a finding of a judicial authority that such veteran or beneficiary is a danger to themselves or others. It would also require VA to notify the Attorney General that the basis for all previous reporting of a veteran to NICS solely because they were appointed a fiduciary, does not apply or no longer applies, thereby activating the F.B.I.’s statutory duty to update the NICS list accordingly.

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 individuals “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 database used to store information about individuals who are 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. State and federal agencies are required to report to the Department of Justice (DOJ), the name and information of individuals who have been “adjudicated as a mental defective” for inclusion in NICS.¹

VA appoints fiduciaries for veterans and other beneficiaries of VA benefits, who are unable to manage their VA benefits on their

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

own because 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 is determined by a VA career employee in the Veterans Benefits Administration (VBA) to be "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, which interprets the term "adjudicated as a mental defective" to mean "[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, 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 have concluded that a person who has been determined by VA to be "mentally incompetent" has been "adjudicated as a mental defective."²

As a result, for decades VA has reported the names and 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, to the DOJ for inclusion in NICS. 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 because 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 and 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 incompetent to handle their VA financial benefits, does a veteran have a separate opportunity to petition VA for relief from inclusion in NICS. The burden falls on the veteran to prove to a VA bureaucrat that they are not a danger to themselves or others.⁴ The Com-

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 as of December 31, 2024, <https://www.fbi.gov/file-repository/cjis/download-active-entries-in-the-nics-indices-as-of-december-31-2023.pdf/view> ; Active Entries in the NICS Indices as of January 3, 2023, <https://www.fbi.gov/file-repository/cjis/active-entries-in-the-nics-indices-by-state.pdf/view>.

⁴ Statement of Jordan B. Cohen, Congressional Research Service, (January 23, 2025), <https://docs.house.gov/meetings/VR/VR09/20250123/117839/HHRG-119-VR09-Wstate-CohenJ-20250123.pdf>; Congressional Research Service, *Gun Control, Veterans' Benefits, and Mental Incompetency Determinations* (July 14, 2023), <https://crsreports.congress.gov/product/pdf/R/R47626>.

mittee is concerned that a veteran who is appointed a fiduciary is not provided the same Constitutional due process rights as a civilian, who must be found to be a danger to themselves or others by a judge, in a court of law, before their name is transmitted to NICS.

The Committee understands that VA's reporting practice discourages veterans from seeking mental health care from VA. As Patrick Murray, Director, National Legislative Service, Veterans of Foreign Wars of the United States (VFW) testified: "The VFW hears from veterans that a negative consequence of VA's current practice is that they are hesitant to seek mental health care because they fear their firearms will be taken away. This has created a significant stigma surrounding mental health and has created a barrier to care for many."⁵

The Committee understands that VA's NICS reporting practice perpetuates the harmful stigma that disabled veterans are automatically dangerous. The Committee also understands that no study has been conducted on veterans with fiduciaries to determine whether they can be presumed to be dangerous to themselves or others.⁶ Therefore, there is no data to support any presumption that disabled veterans who need help from a fiduciary to manage their finances are at greater risk of firearm suicide or violence. In a May 5, 2025, letter to Chairman Bost and Ranking Member Takano from Jennifer Mathis, Deputy Director of the Bazelon Center for Mental Health Law, Ms. Mathis stated:

The Bazelon Center for Mental Health Law supports the amended version of H.R. 1041 [VA's NICS reporting practice] is inconsistent with the statute it purports to implement, has no evidentiary justification, wrongly perpetuated inaccurate stereotypes of individuals with mental disabilities as dangerous, and if continued, would divert already scarce VA resources away from efforts to address the agency's critical mission.

Ms. Mathis further stated:

"[T]he practice is an ineffective strategy to address gun violence, devoid of any evidentiary basis, targeting individuals with fiduciaries as potential perpetrators of gun violence despite the lack of any connection between a person's need for assistance managing V.A. benefits and dangerousness or propensity to engage in gun violence [T]he practice perpetuates the prevalent false association of mental health disabilities with violence and undermines important efforts to promote community integration and employment of people with disabilities.

⁵Statement of Patrick Murray, Veterans of Foreign Wars of the United States (February 25, 2025), <https://docs.house.gov/meetings/VR/VR00/20250225/117899/HHRG-119-VR00-Wstate-MurrayP-20250225.pdf>.

⁶There is only one study that purports to find that veterans with fiduciaries are at higher risk of firearm suicide, but this study did not actually study any veterans with fiduciaries. See Jeffrey Swanson, et al., *Informing Federal Policy on Firearm Restrictions for Veterans with Fiduciaries: Risk Indicators in the Post-Deployment Mental Health Study*, 45 Admin. and Policy in Mental Health and Mental Health Services Rsch. 673, 673–83 (2018) (admitting that "[a] limitation of the study is that its outcome measures . . . do not directly assess the risk of misusing a firearm, which is the ultimate issue for NICS reporting"; and admitting that "[t]his study was also limited with regard to its sample and indirect measure of fiduciary need").

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. This change would remove a barrier to veterans seeking VA mental health care. This section would also be a critical step towards removing the erroneous stigma that disabled veterans are automatically dangerous.

Section 3: Notification of Lack of Basis for the Secretary of Veterans Affairs to Have Transmitted Certain Information to the Department of Justice for use by the National Instant Criminal Background Check System

As of December 31, 2024, roughly 7.7 million individuals are in NICS because they were “adjudicated as a mental defective” by state and territorial courts. On the other hand, roughly 206,000 individuals are in NICS pursuant to reporting by federal agencies. Of that number, roughly 200,000 of those individuals are on NICS pursuant to VA reporting. Thus, 97% of all the individuals included in NICS due to federal agency reporting are from VA. As discussed above, VA erroneously interpreted the statutory term “adjudicated as a mental defective” as including persons who satisfy VA’s regulatory definition of “mentally incompetent” under 38 C.F.R. §3.353(a).

To address the hundreds of thousands of VA beneficiaries have been already added to NICS solely because they require a fiduciary, this section would require VA to notify the Attorney General, in accordance with the notification requirement in 34 U.S.C. §40901(e)(1)(D) that the basis for reporting beneficiaries to NICS since November 30, 1993, solely because they have a fiduciary, does not apply or no longer applies. This notification would require the F.B.I. to update the NICS list accordingly.

The Committee believes that this section is important because it would remedy the past due process and Second Amendment rights violations of hundreds of thousands of veterans already in NICS solely because they required a fiduciary. Veterans on the NICS list solely for this reason would be removed, thereby restoring their Constitutional right to purchase and possess firearms to protect themselves and their families. Veterans on the NICS list for other reasons—i.e., because another federal agency or state or territorial court found them to be a danger to themselves or others and “adjudicated them as a mental defective”—would not be removed from the NICS list under this section.

Section 4: Determination by the Secretary of Veterans Affairs that a Person is Mentally Incompetent is Insufficient to Treat Such Person as a Mental Defective

As discussed above, VA erroneously interpreted Congress's intent when it interpreted the statutory "adjudicated as a mental defective" as including persons who satisfy VA's regulatory definition of "mentally incompetent" under 38 C.F.R. § 3.353(a) and who therefore require a fiduciary to help them manage their finances.

To address this issue, this section would prohibit the Secretary from treating a person as having been "adjudicated as a mental defective" solely on the basis such person meets the definition of "mentally incompetent" under 38 C.F.R. § 3.353(a) and requires a fiduciary.

The Committee believes that this section is critical to ensure that statutory category of "adjudicated as a mental defective" is never again misinterpreted by VA as including VA benefits beneficiaries who simply require a fiduciary to help them manage their VA benefits.

HEARINGS

On February 25, 2025, the Committee on Veterans Affairs held a legislative hearing on H.R. 1041 and other bills that were pending before the committee.

The following witnesses testified:

Ms. Beth Murphy, Acting Principal Deputy Undersecretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Ms. Tracey Therit, Chief Human Capitol Officer, Office of Human Resources and Administration, Operations, Security, and Preparedness, Veterans Health Administration, U.S. Department of Veterans Affairs; Dr. Sachin Yende, Chief Medical Officer, Integrated Veteran Care, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Jim Whaley, Chief Executive Officer, Mission Roll Call; Mr. Patrick Murray, Director, National Legislative Service, Veterans of Foreign Wars of the U.S.; and The Honorable Max Rose, Senior Advisor, Vet Voice Foundation.

The following individuals and organizations submitted statements for the record: American Federation of Government Employees, AFL-CIO (AFGE); Disabled American Veterans (DAV); Whistleblowers of America (WA); Veterans Healthcare Policy Institute (VHPI); National Association of Gun Rights (NAGR); National Association of Veterans' Research and Education Foundations (NAVREF); Concerned Veterans for America (CVA); and Paralyzed Veterans of America (PVA).

Additionally, a Joint-Letter was offered by the following organizations: American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); American Federation of Government Employees (AFGE); American Federation of State, County, and Municipal Employees (AFSCME); American Federation of Teachers (AFT); International Brotherhood of Teamsters (IBT); International Association of Firefighters (IAFF); Laborers' International Union of North America (LIUNA); National Association of Government Employees, SEIU (NAGE); National Federation of Federal Employees (NFFE); National

Nurses United (NNU); National Veterans Affairs Council, AFGE (NVAC); and the Service Employees International Union (SEIU).

Ranking Member Takano submitted the following documents for the record: A letter to The Honorable Morgan Luttrell and The Honorable Morgan McGarvey from Everytown for Gun Safety; a letter to The Honorable Mike Bost and The Honorable Mark Takano from the National Fraternal Order of Police.

COMMITTEE CONSIDERATION

On May 6, 2025, the full Committee met in an open markup session with a quorum being present, and ordered H.R. 1041, as amended, be reported favorably to the House of Representatives by a recorded vote of 13 ayes, 11 noes. During consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute to H.R. 1041 offered by Chairman Bost to require VA to notify the Attorney General that the basis for all previous reporting of veterans to NICS, solely because they have a fiduciary, does not apply or no longer applies. This would also prohibit the Secretary of Veterans Affairs from treating any veteran as “a person adjudicated as a mental defective,” solely because that veteran has a fiduciary. This amendment in the nature of a substitute was agreed to by a recorded vote of 13 ayes, 11 noes.

An amendment to the amendment in the nature of a substitute to H.R. 1041 was offered by Representative Morrison to provide the following exceptions to the NICS reporting prohibition under the bill: exceptions for a beneficiary who has been diagnosed with schizophrenia, a mental illness with psychotic features, dementia of any type, Alzheimer’s disease, frontotemporal lobar degeneration, Prion disease, advanced Parkinson’s disease, and Huntington’s disease. The amendment was not agreed to by a recorded vote of 11 ayes, 13 noes.

An amendment to the amendment in the nature of a substitute to H.R. 1041 was offered by Ranking Member Takano to replace sections two through four of the amendment in the nature of a substitute, with provisions that would 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. Such determination would be based on opinion(s) from a licensed mental health professional, and if it is determined that the veteran is not a danger to themselves or others, VA would be prohibited from submitting their name to NICS solely because the veteran is unable to manage their VA funds. Further, if it is determined that a beneficiary is not a danger to themselves or others, the amendment would allow VA to still determine that a beneficiary is not mentally competent to manage their VA benefits. The amendment was not agreed to by a recorded vote of 11 ayes, 13 noes.

An amendment to the amendment in the nature of a substitute to H.R. 1041 was offered by Representative McGarvey to require the U.S. Court of Appeals for Veterans Claims (CAVC) be the judicial body that must issue an order or finding that the person is a danger to themselves or others. The

amendment would also require the CAVC to establish expedited procedures for making such orders or findings. The amendment was not agreed to by a recorded vote of 11 ayes, 13 noes.

An amendment to the amendment in the nature of a substitute to H.R. 1041 was offered by Representative Morrison to prohibit VA from sending names for removal from NICS until after the VA Secretary submits to Congress certification in writing that the underlying legislation's implementation 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 11 ayes, 13 noes.

A motion by Representative Bergman to report H.R. 1041, as amended, favorably to the House of Representatives was agreed to by a recorded vote of 13 ayes, 11 noes.

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 in the nature of a substitute to H.R. 1041 offered by Chairman Bost was agreed to by a recorded vote of 13 ayes, 11 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: **Tuesday, May 6, 2025**
Subject: **Approval of Chairman Bost Amendment in the Nature of a Substitute**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost	X		
Aumua Amata Coleman Radewagen			
Jack Bergman	X		
Nancy Mace	X		
Mariannette Miller-Meeks	X		
Gregory F. Murphy	X		
Derrick Van Orden	X		
Morgan Luttrell	X		
Juan Ciscomani	X		
Keith Self	X		
Jennifer A. Kiggans	X		
Abraham J. Hamadeh	X		
Kimberlyn King-Hinds	X		
Tom Barrett	X		
Mark Takano		X	
Julia Brownley		X	
Chris Pappas		X	
Sheila Cherfilus-McCormick		X	
Morgan McGarvey		X	
Delia C. Ramirez		X	
Nikki Budzinski		X	
Timothy M. Kennedy		X	
Maxine Dexter		X	
Herbert C. Conaway, Jr.		X	
Kelly Morrison		X	
Total	13	11	

An amendment to the amendment in the nature of a substitute to H.R. 1041 offered by Representative Morrison was not agreed to by a recorded vote of 13 ayes, 11 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: **Tuesday, May 6, 2025**
Subject: **Approval of Morrison # 1 Amendment to the
Amendment in the Nature of a Substitute**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Aumua Amata Coleman Radewagen			
Jack Bergman		X	
Nancy Mace		X	
Mariannette Miller-Meeks		X	
Gregory F. Murphy		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani		X	
Keith Self		X	
Jennifer A. Kiggans		X	
Abraham J. Hamadeh		X	
Kimberlyn King-Hinds		X	
Tom Barrett		X	
Mark Takano	X		
Julia Brownley	X		
Chris Pappas	X		
Sheila Cherfilus-McCormick	X		
Morgan McGarvey	X		
Delia C. Ramirez	X		
Nikki Budzinski	X		
Timothy M. Kennedy	X		
Maxine Dexter	X		
Herbert C. Conaway, Jr.	X		
Kelly Morrison	X		
Total	11	13	

An amendment to the amendment in the nature of a substitute to H.R. 1041 offered by Ranking Member Takano was not agreed to by a recorded vote of 11 ayes, 13 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: **Tuesday, May 6, 2025**
Subject: **Approval of Takano Amendment to
the Amendment in the Nature of a Substitute**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Aumua Amata Coleman Radewagen			
Jack Bergman		X	
Nancy Mace		X	
Mariannette Miller-Meeks		X	
Gregory F. Murphy		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani		X	
Keith Self		X	
Jennifer A. Kiggans		X	
Abraham J. Hamadeh		X	
Kimberlyn King-Hinds		X	
Tom Barrett		X	
Mark Takano	X		
Julia Brownley	X		
Chris Pappas	X		
Sheila Cherfilus-McCormick	X		
Morgan McGarvey	X		
Delia C. Ramirez	X		
Nikki Budzinski	X		
Timothy M. Kennedy	X		
Maxine Dexter	X		
Herbert C. Conaway, Jr.	X		
Kelly Morrison	X		
Total	11	13	

An amendment to the amendment in the nature of a substitute to H.R. 1041 offered by Representative McGarvey was not agreed to by a recorded vote of 11 ayes, 13 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: **Tuesday, May 6, 2025**
Subject: **Approval of McGarvey Amendment to the Amendment
In the Nature of a Substitute**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Aumua Amata Coleman Radewagen			
Jack Bergman		X	
Nancy Mace		X	
Mariannette Miller-Meeks		X	
Gregory F. Murphy		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani		X	
Keith Self		X	
Jennifer A. Kiggans		X	
Abraham J. Hamadeh		X	
Kimberlyn King-Hinds		X	
Tom Barrett		X	
Mark Takano	X		
Julia Brownley	X		
Chris Pappas	X		
Sheila Cherfilus-McCormick	X		
Morgan McGarvey	X		
Delia C. Ramirez	X		
Nikki Budzinski	X		
Timothy M. Kennedy	X		
Maxine Dexter	X		
Herbert C. Conaway, Jr.	X		
Kelly Morrison	X		
Total	11	13	

A second amendment to the amendment in the nature of a substitute to H.R. 1041 offered by Representative Morrison was not agreed to by a recorded vote of 11 ayes, 13 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: **Tuesday, May 6, 2025**
Subject: **Approval of Morrison # 2 Amendment to the
Amendment in the Nature of a Substitute**

NAME	YEA/AYE	NAY/NO	Present
Mike Bost		X	
Aumua Amata Coleman Radewagen			
Jack Bergman		X	
Nancy Mace		X	
Mariannette Miller-Meeks		X	
Gregory F. Murphy		X	
Derrick Van Orden		X	
Morgan Luttrell		X	
Juan Ciscomani		X	
Keith Self		X	
Jennifer A. Kiggans		X	
Abraham J. Hamadeh		X	
Kimberlyn King-Hinds		X	
Tom Barrett		X	
Mark Takano	X		
Julia Brownley	X		
Chris Pappas	X		
Sheila Cherfilus-McCormick	X		
Morgan McGarvey	X		
Delia C. Ramirez	X		
Nikki Budzinski	X		
Timothy M. Kennedy	X		
Maxine Dexter	X		
Herbert C. Conaway, Jr.	X		
Kelly Morrison	X		
Total	11	13	

Final passage of H.R. 1041, as amended, was agreed to by a recorded vote of 13 ayes, 11 noes. The names of Members voting for and against follow:

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

MARKUP

FULL COMMITTEE ROLL CALL VOTES

Date: Tuesday, May 6, 2025
Subject: Approval of Final Passage of H.R. 1041, as amended

NAME	YEA/AYE	NAY/NO	Present
Mike Bost	X		
Aumua Amata Coleman Radewagen			
Jack Bergman	X		
Nancy Mace	X		
Mariannette Miller-Meeks	X		
Gregory F. Murphy	X		
Derrick Van Orden	X		
Morgan Luttrell	X		
Juan Ciscomani	X		
Keith Self	X		
Jennifer A. Kiggans	X		
Abraham J. Hamadeh	X		
Kimberlyn King-Hinds	X		
Tom Barrett	X		
Mark Takano		X	
Julia Brownley		X	
Chris Pappas		X	
Sheila Cherfilus-McCormick		X	
Morgan McGarvey		X	
Delia C. Ramirez		X	
Nikki Budzinski		X	
Timothy M. Kennedy		X	
Maxine Dexter		X	
Herbert C. Conaway, Jr.		X	
Kelly Morrison		X	
Total	13	11	

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. 1041, as amended, are to ensure that veterans and their families can access their VA benefits without any violation of their Constitutional rights and that prior violations of their Constitutional rights are remedied.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1041, as amended, 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

Pursuant to clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1041, as amended, provided by the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 1041, Veterans 2nd Amendment Protection Act				
As ordered reported by the House Committee on Veterans' Affairs on May 19, 2025				
By Fiscal Year, Millions of Dollars		2025	2025-2030	2025-2035
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>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2036?	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 2036?	No	Contains intergovernmental mandate?		No
		Contains private-sector mandate?		No
* = between -\$500,000 and \$500,000.				

H.R. 1041 would prohibit the Department of Veterans Affairs (VA) from reporting certain information to the Department of Justice (DOJ) 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.

VA appoints fiduciaries to manage benefits for people who have been determined unable to manage benefits on their own. Under current law, in some cases, VA reports that information to the NICS. As a result of that reporting, a person may be deemed ineligible to purchase a firearm. (The Full-Year Continuing Appropriations and Extensions Act, 2025, 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 finds that the person poses a danger to themselves or others. VA must also notify DOJ that any information previously transmitted about people who use a fiduciary no longer applies. 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 findings 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. 1041, as amended.

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. 1041, as amended.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1041, as amended, 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. 1041, as amended, 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 DOJ, for use by NICS, the names and 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.

Section 3. Notification of lack of basis for the Secretary of Veterans Affairs to have transmitted certain information to the Department of Justice for use by the National Instant Criminal Background Check System

Section 3 would amend Title 38, U.S. Code, Chapter 55, by creating a new section 5501C that would require VA, within 30 days of enactment, to notify the Attorney General, in accordance with 34 U.S.C. § 40901(e)(1)(D), that the basis for the transmittal of a beneficiary’s personal information to the DOJ for use by NICS solely because VA has determined that beneficiary requires a fiduciary, does not apply, or no longer applies.

Section 4. Determination by the Secretary of Veterans Affairs that a person is mentally incompetent is insufficient to treat such person as a mental defective

Section 4 would amend Title 38, U.S. Code, Chapter 55 by creating a new section 5501D that would prohibit VA from treating a person as having been adjudicated as a mental defective, solely because that person is mentally incompetent under 38 C.F.R. § 3.353 or requires a fiduciary under section 5502 of title 38.

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.

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

5501C. *Notification of lack of basis for transmittal of certain information to the Department of Justice for use by the national instant criminal background check system.*

5501D. *Determination of mental incompetence is insufficient basis to treat a person as a mental defective.*

* * * * *

§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 (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541), 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 beneficiary 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.

§5501C. *Notification of lack of basis for transmittal of certain information to the Department of Justice for use by the national instant criminal background check system*

The Secretary shall, within 30 days of the enactment of the Veterans 2nd Amendment Protection Act, and in accordance with section 103(e)(1)(D) of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901(e)(1)(D); Public Law 103–159; 107 Stat. 1541), notify the Attorney General that the basis for the transmittal, on or after November 30, 1993, by the Secretary, of 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 beneficiary under section 5502 of this title, 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 (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541), does not apply, or no longer applies.

§5501D. Determination of mental incompetence is insufficient basis to treat a person as a mental defective

The Secretary shall not treat a person as having been adjudicated as a mental defective solely on the basis that the Secretary has determined that such person—

- (1) is mentally incompetent under section 3.353 of title 38, Code of Federal Regulations (or successor regulation); or*
- (2) requires a fiduciary under section 5502 of this title.*

* * * * *

MINORITY VIEWS

On May 6, 2025, the full House Committee on Veterans' Affairs met in open markup and considered H.R. 1041, the *Veterans 2nd Amendment Protection Act*, introduced by Chairman Mike Bost. The measure was ordered favorably reported to the full House, with an Amendment in the Nature of a Substitute, on a straight party line vote, with Committee Democrats united in opposition.

Sadly, this legislation not only carries forward the Majority's flawed and dangerous language from H.R. 705¹ in the previous Congress, but H.R. 1041 as reported expands that language to include new provisions which exacerbate the increased risk of harm inherent in the underlying legislation. Accordingly, Committee Democrats have, and must continue to, reject this legislation.

As with previous versions of this bill, H.R. 1041 would prevent the Department of Veterans Affairs (VA) from reporting information on a beneficiary in its Fiduciary Program to the National Instant Criminal Background Check System (NICS) without a determination from a judicial body that the beneficiary poses a potential danger to themselves or others. This provision is based on several false premises: (1) that VA's Fiduciary Program bases its decisions on financial acumen, (2) that there is insufficient due process in VA's system to protect the constitutional rights of beneficiaries, and (3) that only judicial review is sufficient to satisfy due process.

Regarding the first premise: according to VA's testimony in this and previous years, as well as program guidelines, decisions on whether to appoint a fiduciary for a beneficiary are based on the medical evidence on record, not a math test. It is that medical evidence, which often includes a mental health diagnosis such as schizophrenia, dementia, Alzheimer's disease, Parkinson's disease and others, which leads VA to adjudicate that a beneficiary is unable to manage their own finances.

On the second: 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)², 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. 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.

¹For Minority Views on H.R. 705 from the 118th Congress, see, H. Rep. 118-677 (118th Cong).

²Pub. L. No. 110-180 (110th Cong., 2008).

And with respect to the third premise: in *Welch v. US* (1985), the First Circuit stated, “All due process requires is that a statutory prohibition be . . . set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.”³ NIAA requires VA to give multiple notices, both oral and written, that mention what the term “adjudicated as a mental defective” means and how it applies to beneficiaries, what penalties there are for violating it, and what relief from such disability with respect to firearms is available under federal law, even before any proceedings to adjudicate a person as a “mental defective” begins.

VA is also required to follow the 21st Century Cures Act,⁴ which codified existing procedural due process policies and regulations of the VA, which is in line with the Fifth Amendment Due Process Clause’s notice and fair warning requirements. VA has to provide a notice of the proposed determination and all supporting evidence, and an opportunity for the beneficiary to request a hearing, be represented by counsel and present evidence, including from a medical professional. NIAA also requires the VA to notify beneficiaries assigned a fiduciary of the ramifications of mental incompetency determinations and the possible loss of their gun rights due to their name being placed in NICS. So, VA’s administrative processes clearly satisfy constitutional muster with respect to due process.

As mentioned previously, the reported language of H.R. 1041 goes beyond the addition of a layer of judicial review on an already lengthy and rigorous process. This bill also contains a provision to make it effective retroactively. This would mean all beneficiaries currently on the NICS list because of VA reporting would be removed upon enactment, without any consideration of whether or not that person warrants removal or poses a danger to themselves or others. This is contrary to the Majority’s stated desire for these determinations of “dangerousness” for new transmittals and represents a dangerous level of uncertainty.

Additionally, this bill clumsily attempts to sever the link between VA’s mental competency determinations, and the definition of “adjudicated as mental defective” under the Brady Handgun Violence Prevention Act and the Gun Control Act.⁵ According to VA’s testimony before the Committee, the language in the bill is insufficient to accomplish the goal. The Minority concurs with this interpretation and would add that the language in the bill would only serve to put beneficiaries at risk of unwittingly committing a felony. By no longer being on the NICS list, while still being considered ineligible to purchase and own a firearm, beneficiaries may attempt and even succeed in purchasing a firearm. Therefore violating the law and making them subject to prosecution.

Lastly, there is one aspect of the Majority’s arguments about this bill that the Minority does agree with. The stigma around seeking mental health help for fear of losing Second 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 propagated online and elsewhere. It is a perception issue that the

³ 750 F.2d 1101 (1st Cir. 1985).

⁴ Pub. L. No. 114–225 (114th Cong., 2016).

⁵ Pub. L. No. 103–159 (103rd Cong., 1993).

Majority and, unfortunately, many Veterans Service Organizations 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. And the Minority will note that the Veterans Health Administration, where veterans would be receiving mental healthcare, plays absolutely no role in the Fiduciary Process and does not ever report patients to NICS. Moreover, according to recent Federal Bureau of Investigation data,⁶ beneficiaries reported to NICS by VA make up only 199,455 or 0.6 percent of a total 33,025,815 of entries in the database.

During full Committee markup on this measure, Committee Democrats offered several amendments in an attempt to improve the legislation. Those amendments included, among others, an amendment that would strike the underlying bill and replace it with language stating that VA cannot report beneficiaries to NICS until obtaining a secondary mental health determination, and an amendment to exempt those with the most serious mental health conditions from the underlying bill's prohibition on NICS reporting. Committee Democrats felt both those amendments would have significantly improved the underlying bill and struck a fair balance between the Majority's desire to expand firearms ownership and Committee Democrats' desire to protect beneficiaries and those around them from the potential for harm. As in the past, both amendments were voted down on a party-line roll call vote, along with many other amendments that would have marked a much-needed shift away from the Majority's wrongheaded policy choice.

For these reasons and more, Committee Democrats 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.



⁶Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Active Entries in the NICS Indices as of December 31, 2024. <https://www.fbi.gov/file-repository/cjis/download-active-entries-in-the-nics-indices-as-of-december-31-2023.pdf>.