

H.R. 1041: Veterans 2nd Amendment Protection Act, as amended

Courtesy of the House Committee on Veterans' Affairs Majority Staff

HOUSE COMMITTEE ON
VETERANS' AFFAIRS
CHAIRMAN MIKE BOST

BACKGROUND:

The Department of Veterans Affairs (VA) appoints fiduciaries for veterans who are unable to manage their VA benefits on their own as a result of any disability. By appointing a veteran a fiduciary, VA bureaucrats are able to immediately send the veteran's name to the F.B.I.'s National Instant Criminal Background Check System (NICS list).¹ By doing so, VA strips veterans of their Constitutional right to possess and purchase a firearm, without any finding by any court or any medical professional that veterans with fiduciaries are dangerous and should be placed on the NICS list. **There is zero data to support that a veteran who is unable to manage their finances is automatically dangerous.** Further, there is zero data to support that veterans who cannot manage their finances because of a mental health condition are automatically at risk for suicide or homicide.

Yet, VA bureaucrats have reported over 250,000 veterans to NICS since NICS was established in 1993. As a result, veterans are discouraged from seeking mental health care, services, and support from VA for fear of being stripped of their right to possess a firearm to protect themselves and their families. Finally, once VA has reported a veteran to NICS, the veteran has the burden of proving they are not dangerous when petitioning for removal from NICS. By comparison, in every other federal and state legal system, before they are stripped of their Constitutional right to bear arms, civilians and criminals must be proven dangerous by a judge. **Since March 9, 2024, VA has been temporarily prohibited from using any funds to report a veteran assigned a fiduciary to NICS without a court ruling that that veteran is a danger to themselves or others.**² But Congress must pass a permanent legislative solution to protect due process.

STAKEHOLDER SUPPORT:

The *Veterans 2nd Amendment Protection Act* would prohibit VA from reporting veterans to NICS solely because they have a fiduciary to help them manage their VA financial benefits, without a court ruling that they are a danger to themselves or others, thus protecting veterans' Constitutional due process and Second Amendment rights. The bill, as amended, would also 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, which would update the NICS list. Veterans on the NICS list because a court found them to be a danger to themselves or others, would not be removed from the NICS list under this bill.

This bill is supported by the Administration and organizations including: National Disability Rights Network, Bazelon Center for Mental Health Law, The American Legion, Vietnam Veterans of America, Gun Owners of America, National Rifle Association, National Association for Gun Rights, National Shooting Sports Foundation, Mission Roll Call, Association of Mature American Citizens Action, Black Veterans Empowerment Council, National Association of County Veterans Service Officers, Vickie Paladino, Minority Whip, New York City Council Member, District 19 Queens.

¹ The *Gun Control Act of 1968* (Pub. L. 90-617) 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) (enacted Nov. 30, 1993), established NICS, a computer system used to record information about individuals not eligible to possess or purchase firearms. VA and the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, interpreted the category of persons "adjudicated as a mental defective" as including any veteran who is simply unable to manage their VA financial benefits because of a disability. See 38 C.F.R. § 3.353(a); 27 C.F.R. § 478.11.

² *Consolidated Appropriations Act of 2024* and subsequent Continuing Resolutions. This temporary solution expires September 30, 2025.

THE MESSAGE:

- The *Veterans 2nd Amendment Protection Act* would permanently end VA's practice of subjecting veterans to different rules and NICS reporting standards compared to civilians simply because those veterans require a fiduciary to help them manage their VA financial benefits.
- The *Veterans 2nd Amendment Protection Act* would remedy all past Constitutional due process and Second Amendment rights violations for the over 250,000 veterans who VA previously reported to NICS solely because they required a fiduciary.
- Veterans sacrificed to protect the Constitutional rights of every American, and veterans deserve the same Constitutional due process rights as every other American.
- VA's current reporting practice stigmatizes mental health. A bureaucrat should not be able to assume – without a court order – that veterans who cannot manage their finances due to mental illness are dangerous and therefore should not have the Constitutional right to bear arms.