



January 23, 2025

The Honorable Morgan Luttrell
Chairman
Subcommittee on Disability Assistance &
Memorial Affairs
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20003

The Honorable Morgan McGarvey
Ranking Member
Subcommittee on Disability Assistance &
Memorial Affairs
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Luttrell and Ranking Member McGarvey:

Everytown for Gun Safety thanks the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs for holding a hearing on the urgent need to reduce veteran suicide deaths, including those involving firearms. To that end, we write to provide the Subcommittee with our own expertise and recommendations, which we respectfully ask the Subcommittee to keep in mind as the Subcommittee considers legislative proposals in the 119th Congress. In addition, we write to reiterate and reaffirm our own commitment to protecting veterans from this preventable epidemic.

The Crisis of Veteran Suicide Deaths

Last month, the Department of Veterans Affairs (VA) released the 2024 National Veteran Suicide Prevention Annual Report. The report is sobering and confirms what we have long known—that our nation is experiencing an epidemic of suicides among the brave men and women who have served and sacrificed for the United States, and that most of these suicide deaths involve firearms.¹ In 2022, there were 6,407 veteran suicide deaths - an average of more than 17 per day. Firearms were used in 73.5 percent of those deaths.² Every state suffered from veteran suicide deaths in 2022. According to the VA, the state that suffered the most deaths—582—was Texas.³ Of those deaths, 434 involved a firearm.⁴ But no state was spared from this epidemic. And as the VA has found, “[f]irearms are the most lethal form of suicide, with a 90% fatality rate compared to other methods, which are far less likely to result in death.”⁵ Accordingly, the VA has stated that “[t]he lethality of firearms makes secure storage and controlled access a critical element in reducing [v]eteran suicides.”⁶

Statistics alone do not begin to cover the devastating impact of these suicide deaths on families and communities. Each suicide death of a veteran is an undeniable tragedy. The loss of 17 veterans every single day to suicide is an urgent call to action. We can, and must, make it a national priority to reduce this epidemic. To do so, the VA must be able to use all available tools

¹ Department of Veterans Affairs, “[2024 National Veteran Suicide Prevention Annual Report, Part 2 of 2: Report Findings](#)” (Dec. 2024).

² Id. at p. 4.

³ Department of Veterans Affairs, [Texas Veteran Suicide Data Sheet, 2022](#).

⁴ Id.

⁵ Department of Veterans Affairs, “[2024 National Veteran Suicide Prevention Annual Report, Part 1 of 2: In-Depth Reviews](#)” (Dec. 2024), at p. 7.

⁶ Id.

to protect veterans, including from the irreversible harm that can occur when someone in crisis has access to a firearm.

Though there are multiple contributing factors and events that lead to a suicide death, there is a strong association between veteran suicide and mental illness. According to the VA's latest report, around 40 percent of veterans who died by suicide in 2022 had received health care through the Veterans Health Administration (VHA) in 2022 or 2021,⁷ and of that population, 60.2 percent—1,548 veterans—had been diagnosed by the VHA with mental health or substance use disorders.⁸ Of those 1,548 veterans:

- 992 had been diagnosed with depression;
- 671 had been diagnosed with anxiety;
- 640 had been diagnosed with PTSD;
- 209 had been diagnosed with bipolar disorder;
- 77 had been diagnosed with schizophrenia; and,
- 98 had been diagnosed with other psychoses.⁹

In other words, the VA's report shows that at least 24 percent (1,548 out of 6,407) of the veterans who died by suicide in 2022 had recently used VHA facilities and had been diagnosed by the VHA with a mental health or substance use disorder, and that many of these diagnoses involved severe mental health conditions.¹⁰ This 24 percent in 2022 represents an increase over 2021, when 23 percent (1,495 out of 6,404) of veteran suicide deaths involved veterans who had recently used VHA services and had been diagnosed with mental health or substance use disorders.¹¹ The bottom line is that there is a clear link between veteran suicide deaths and veterans who have been diagnosed with mental illnesses, and the number of such suicides appears to be growing.

Bipartisan Action to Prevent Veteran Firearm Suicide

Both political parties have long shared the goal of preventing veteran firearm suicides. For example, in his first term, President Trump issued an Executive Order creating a “National Roadmap to Empower Veterans and End Suicide.” In it, he directed the VA and other agencies to develop a comprehensive plan to end veteran suicide.¹² The Executive Order noted that “[o]ur collective efforts must begin with the common understanding that suicide is preventable and prevention requires more than intervention at the point of crisis.”¹³ President Trump's first administration also released a toolkit on safe firearm storage for veterans that the VA had developed in partnership with the American Foundation for Suicide Prevention and the National

⁷ Id. at p. 23, Figure 16. As noted in Footnote 12 of the report, “Recent Veteran VHA Users were defined as Veterans who received inpatient or outpatient health care (in person or via telehealth) at a VHA facility in the year of interest or the prior year (here, in 2022 or in 2021). Health care received from non-VHA facilities, including such care that was funded by VA (i.e., Community Care) was not included.”

⁸ Id. at p. 32 and p. 33, Table 6.

⁹ Id. at p. 33, Table 6. Note that veterans may have been diagnosed with multiple conditions.

¹⁰ These statistics do not include any potential mental health diagnoses among the 60 percent of veterans who died by suicide in 2022 and who had not recently used VHA services prior to their death. To that end, the statistics likely understate the annual number of suicides of veterans who had been diagnosed with mental health conditions.

¹¹ Again, the VA report's focus on veterans who were recent users of VHA services likely undercounts the total number of mental health diagnoses among all veterans who died by suicide in 2021.

¹² [Executive Order 13861](#) (Mar. 5, 2019).

¹³ Id.

Shooting Sports Foundation.¹⁴ This toolkit acknowledged that “environmental factors such as access to lethal means increase the risk for suicide,” and noted that firearms, specifically, “were used in nearly half of all suicides among Americans in 2016, and nearly 70 percent of all [v]eteran suicide deaths.”¹⁵

The Biden Administration, too, took significant steps to reduce veteran firearm suicides. For instance, in 2021, the Biden Administration announced a comprehensive military and veteran suicide prevention strategy,¹⁶ and in 2023, the VA established a policy allowing veterans free emergency suicide prevention care at no cost in VA facilities.¹⁷ As President Trump begins his second term, it is critical that this bipartisan work to reduce veteran firearm suicides continues at the VA and other federal agencies, in Congress, and with outside stakeholders.

At the same time, Congress must undo the dangerous and misguided rider that it enacted last March in the Consolidated Appropriations Act, 2024, which has undermined one important tool in the VA’s toolkit to prevent firearm suicides: the FBI’s National Instant Criminal Background Check System (NICS).

The NICS Background Check System and the VA

There has long been a debate over how the VA’s rules and processes related to mental illness should interact with NICS. This debate, unfortunately, has often taken place without a full public understanding of VA processes and without the context of the urgent national imperative to reduce veteran suicides. As a result, there has been a perception that the decades-long and legally-required coordination between the VA and NICS when it comes to mental illness has violated due process and Second Amendment rights and has harmed veterans—evidenced by the title of this hearing, “Correcting VA’s Violations of Veterans’ Due Process and Second Amendment Rights.” That is not the case.

The VA’s rules and processes related to mental illness and coordination with NICS have extensive due process protections built in, as Congress has required, and are fully consistent with the Second Amendment. In addition, these rules and processes have helped reduce the risk of harm that results when those with serious mental illness get access to guns. To continue to impede or, worse, permanently end this coordination, as some have proposed, would set us backwards. It would make it more difficult to reduce veteran suicide deaths and spare families and communities from the pain of these gun tragedies.

NICS keeps firearms from being sold to individuals who are not allowed under federal law to buy or possess them—also known as “prohibited persons”. Since 1968, these prohibited persons have included anyone who has been “adjudicated as a mental defective,”¹⁸ which has been defined to mean someone who has been found by a lawful authority to either be a danger to himself or others or to lack the mental capacity to manage his own affairs as a result of the person’s mental illness, incompetency, condition or disease.¹⁹ The VA, in the course of awarding

¹⁴ Press Release, Department of Veterans Affairs, “[VA releases safe firearm storage toolkit in suicide prevention effort](#)” (Apr. 12, 2020).

¹⁵ Department of Veterans Affairs, American Foundation for Suicide Prevention, and National Shooting Sports Foundation, “[Suicide Prevention is Everyone’s Business: A Toolkit for Safe Firearm Storage in Your Community](#),” at p. 2.

¹⁶ Kate Sullivan, “[Biden announces new military and veteran suicide prevention strategy](#),” CNN (Nov. 2, 2021).

¹⁷ Kathryn Watson, “[Nearly 50,000 veterans used free emergency suicide prevention in first year of program, VA says](#),” CBS News (Jan. 17, 2024).

¹⁸ 18 U.S.C. §§ 922(d)(4) and (g)(4).

¹⁹ 27 C.F.R. § 478.11.

benefits to veterans and other VA beneficiaries, may determine through a comprehensive process that an individual is “mentally incompetent.” Under VA regulations, “[a] mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or manage his or her own affairs.”²⁰ The key language is that the mental incompetency determination is “because of injury or disease” — not, as some have suggested, solely because the VA may also appoint a fiduciary to manage the veteran’s benefits. The types of “injury or disease,” also called “mental disorders,” at issue include diagnoses for major depressive disorder, panic disorder, schizophrenia, bipolar disorder, and more.²¹

Until March 2024, the VA, for three decades, had provided information to NICS on those who the VA had determined to be “mentally incompetent” because such individuals are prohibited from buying or possessing guns under federal law. As the Supreme Court recognized in *District of Columbia v. Heller* in 2008, prohibitions on the possession of firearms by the “mentally ill” are consistent with the Second Amendment.²² And the VA process for making mental incompetency determinations also includes strong due process protections that Congress has reviewed and refined twice in recent years on a broadly bipartisan basis with the NICS Improvement Amendments Act of 2007 and the 21st Century Cures Act. These protections include:

- **Notice and the right to a hearing, to present evidence and witnesses, and to have legal representation:** When the VA is made aware that a veteran or other VA beneficiary may be unable to manage his or her own affairs, the VA makes a proposed rating of incompetency and provides the individual with notice of the proposed rating and information about the their right to request a hearing, have representation, and present evidence and witnesses.²³
- **High standard of proof:** The VA may only make a determination of mental incompetency where the medical evidence is clear, convincing, and leaves no doubt as to the individual’s incompetency.²⁴ Where there is reasonable doubt, such doubt must be resolved in favor of competency.²⁵
- **Avenues for appeal of the VA’s determination:** An individual who objects to a final determination that he or she is “mentally incompetent” has the right to a hearing before the Board of Veterans Affairs, and the right to judicial review by the Court of Appeals for Veterans Claims, whose decisions may be appealed to the Court of Appeals for the Federal Circuit.²⁶
- **Avenues to appeal being considered a prohibited person from firearms possession:** The VA also has a program to provide individuals determined to be “mentally incompetent” with an opportunity to request that their information be removed from NICS with clear criteria for considering requests. These decisions are subject to judicial review in federal district court.²⁷

²⁰ 38 C.F.R. § 3.353(a).

²¹ 38 C.F.R. § 4.130.

²² *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

²³ 38 C.F.R. § 3.103.

²⁴ 38 C.F.R. § 3.353(c).

²⁵ 38 C.F.R. § 3.353(d).

²⁶ 38 C.F.R. § 3.353(e).

²⁷ See Congressional Research Service, “[Gun Control, Veterans’ Benefits, and Mental Incompetency Determinations](#)” at pp. 7-8 (July 14, 2023). In Fiscal Year 2022, the VA processed 33 petitions under this process, 11 of which involved beneficiaries who were removed from NICS because they successfully appealed their determination of mental incompetency.

NICS is only effective in keeping prohibited persons from obtaining guns when NICS contains updated and accurate information on prohibited persons. It is especially important that NICS contain accurate *and complete* mental health records given the increased risks of suicide and gun violence when guns are in the hands of those with mental illness. At the end of 2023, there were 264,893 active records in NICS of persons who had been determined “mentally incompetent” by the VA.²⁸ The VA’s submission of mental health records to NICS is particularly important in light of the veteran suicide crisis and the fact that veterans are three times more likely to die by gun suicide than non-veterans.²⁹

Unwarranted Restrictions on Information Sharing Between the VA and NICS

Even though records of VA mental incompetency determinations are mission-critical for the FBI NICS system to work effectively to deny gun sales to prohibited purchasers, and even though the longstanding system of VA mental incompetency determinations has many due process safeguards built in, and even though Congress has come together twice in recent years to add further due process safeguards through broadly bipartisan laws like the NICS Improvement Amendments Act and the 21st Century Cures Act, there nonetheless has been an effort by certain Members of Congress since 2008 to impede or stop the VA from providing mental health information to NICS. These efforts came to a head in 2024 when a dangerous and misguided rider was added to the Fiscal Year 2024 Military Construction, Veterans Affairs, and Related Agencies Appropriations Act that prohibits the VA from using Fiscal Year 2024 funds to report mental health records to NICS unless the VA is aware that a judge, magistrate, or other judicial authority also determined that the person in question poses a danger to themselves or others.³⁰ This rider was included in the final legislation, the Consolidated Appropriations Act, 2024, and went into effect in March.

However, in enacting this rider, Congress failed to provide the VA with funding, guidance, support, or time to establish a new process for seeking or obtaining such a court determination. As a result, the VA has stopped all reporting of its mental incompetency determinations to NICS. There are now a growing number of veterans and other VA beneficiaries who have been diagnosed by the VA with serious mental disorders, who have been found by the VA determination process to be “mentally incompetent,” and who are at increased risk of suicide—but who the NICS system knows nothing about. Such persons with serious diagnosed mental illnesses and post-March 2024 mental incompetency determinations—likely thousands—can walk into a gun store and purchase a gun because a NICS background check will not stop them. In addition, because the rider included in the Consolidated Appropriations Act, 2024, did not change the underlying law on prohibited persons, but rather *just* restricted VA funds from being used to report records to NICS, those whose names have been withheld from NICS are still prohibited from buying or possessing firearms and are subject to felony penalties for those actions even though they can clear a background check. Congress does not seem to have thought these issues through.

Other legislation has been proposed in this Committee’s jurisdiction, including one bill—the Veterans 2nd Amendment Protection Act—that was passed out of Committee in the 118th Congress on a party-line vote that would take this rider even further. This legislation would make

²⁸ FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS), [Active Entries in the NICS Indices as of December 31, 2023](#).

²⁹ See also Everytown for Gun Safety Support Fund, [“Those Who Serve: Addressing Firearm Suicide Among Military Veterans”](#) (Mar. 7, 2024).

³⁰ See Section 413 of the Consolidated Appropriations Act, 2024.

the rider permanent and do so without providing any funding, resources, or even a path for the VA to seek judicial determinations of dangerousness. It would further increase the risk of suicide and self-harm to our most vulnerable veterans. This Committee has also considered legislation to make this rider retroactive—which would result in the removal of hundreds of thousands of mental health records that have been reported to NICS regardless of how long those records have been in NICS. It would be deeply irresponsible for the Committee to make the rider permanent or retroactive without even assessing how many VA records have been blocked from NICS since March 2024 and how many of those veterans may have obtained guns and used them to harm themselves or others. While we know from the VA’s latest report that suicides by veterans diagnosed with serious mental disorders increased from 2021 to 2022, we do not yet know what has happened since the rider took effect. Before Congress takes steps to extend or expand it, this Committee should find out.

If Congress believes that more process needs to be added to how the VA determines that someone is “mentally incompetent” and coordinates with NICS, then Congress should provide the VA with the funding, resources, and time to do so. There are numerous credible options to set up an appropriate and efficient process that would include judicial findings of dangerousness. For example, the VA could enlist Veterans’ Treatment Courts, the Board of Veterans’ Appeals, the Court of Appeals for Veterans Claims—or some combination thereof—to serve as the “judicial authority.” Such a straightforward process could leave the current mental incompetency determination process as it has stood for decades, but add an additional evaluation by one of these judicial authorities immediately after the VA makes a mental incompetency determination. In this new step of the process—a final step before the record is ultimately shared with NICS—the judicial authority could evaluate the evidence presented and make a determination whether the newly-prohibited individual presents a danger to themselves or others. While establishing such a process would take resources and time for the VA to implement, those are manageable hurdles—especially if Congress is serious about reducing veteran firearm suicides. However, much of the legislation that has been proposed in this space ignores the question of how judicial findings of dangerousness should be obtained, and amendments that have been offered in the past by Democratic Members of this Committee that would have done so were rejected on party-line votes. At a time when everyone agrees that reducing veteran suicides should be a national focus, it is hard to understand why these proposals fail to address this issue.

Conclusion

It is a national tragedy that we lose 17 veterans to suicide every single day in the United States, and that most of these deaths involve a gun. We know from the VA’s latest report that there were at least 1,548 veterans in 2022 who died by suicide after having been diagnosed by the VA with mental health or substance abuse disorders—more than four veterans each day, and that is likely an undercount. We have to do more to reduce veteran suicides, and it is clear that doing so means we have to address how mental disorders and firearm access increase the risk of harm.

Until last March, the VA had established and used a comprehensive process for sharing mental health records with NICS that respected the Second Amendment and that provided robust due process protections with multiple avenues for appeal through the VA and the courts. It was not a perfect system—no system is—but Congress had acted on two separate occasions in recent years to improve it on a bipartisan basis. Congress acted again in March, but rather than build on it, Congress shelved it. In doing so, Congress has removed a critical tool from the VA’s suicide prevention toolbox—leaving NICS in the dark about a population of veterans who are at high

risk of self-harm. That is a serious problem that this Committee should be working to correct—not considering legislation that would make it worse.

We hear, time and again, that the way to reduce gun deaths in the United States is to enforce the gun laws on the books and to treat gun violence as a mental health problem. But Congress undermined both of these approaches with last year's rider and some have proposed to go further. That would be unacceptable and dangerous. Instead, this Congress must fix this rider so that it does not take our veteran suicide prevention efforts even further backwards.

Sincerely,

Monisha Henley

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Everytown for Gun Safety