



THE COALITION TO STOP GUN VIOLENCE

**Written Statement of the Coalition to Stop Gun Violence
Submitted to the House Committee on Veterans' Affairs
Re: In opposition of H.R. 3450 "Second Amendment" and
H.R. 3826, the "Veterans 2nd Amendment Protection Act"
September 10, 2020**

Contact:

Josh Horwitz

Executive Director, Coalition to Stop Gun Violence

Jhorwitz@csgv.org

The Coalition to Stop Gun Violence (CSGV) is the nation's oldest gun violence prevention organization founded in 1974. We seek to make gun violence rare and abnormal by developing and advocating for evidence-based solutions to reduce gun injury and death in all its forms.

CSGV supports a risk-based approach to gun violence prevention and believes policies and practices should focus on preventing access to firearms by people exhibiting dangerous behaviors that are associated with the risk of future violence, not on the basis of a mental health diagnosis alone. Additionally, we believe that risk-based firearm prohibitions should be balanced with policies that offer a timely opportunity for the restoration of firearm rights.

As such, we believe that the current process and conditions under which veterans who are beneficiaries of programs administered by the Department of Veterans Affairs (VA) may be treated as "adjudicated as a mental defective" under the Gun Control Act of 1968 should be updated to be more nuanced, specific, and based on the best available evidence. Unfortunately, H.R. 3450 and H.R. 3826, the "Veterans 2nd Amendment Protection Act" fall short of achieving that goal.

Current Law

Current federal law prohibits individuals who have been "adjudicated as a mental defective or who have been committed to a mental institution"* from purchasing, possessing, receiving or transporting firearms or ammunition.¹ "Adjudicated as a mental defective" includes those who have been found by a lawful authority to, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, be "a danger to self or to others; or lack the mental capacity to contract or manage his own affairs."²

The Veterans Benefits Administration (VBA) appoints a fiduciary to manage a veteran's benefits after determining that a veteran "because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs."³ As a result of this determination, the VA considers these beneficiaries to be "adjudicated a mental defective" under the Gun Control Act, and reports the names of such individuals to the FBI where they are entered into the National Instant Criminal Background Check System (NICS). Since 1998, the VA has reported the names of over 167,000 individuals to the FBI for inclusion in the NICS Index. The total number of veterans with fiduciaries represent about 10% of all veterans with service-connected mental health disabilities; 2% of veterans served by the Veterans Health Administration; and less than 1% of the total US veteran population.⁴

* Note: We find this terminology incredibly stigmatizing to individuals living with mental illness, though it is what is written in federal code, and therefore the terminology used throughout.



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In response to concerns that veterans lost their Second Amendment rights unjustly, the 21st Century Cures Act improved the due process requirements in the fiduciary appointment process. The law passed with bipartisan support and was supported by both gun violence prevention organizations and the National Shooting Sports Foundation (NSSF).⁵

Before determining that a beneficiary is mentally incompetent, the VA must now provide the beneficiary with: (1) Notice of the proposed adverse determination and the supporting evidence; (2) An opportunity to request a hearing; (3) An opportunity to present evidence, including an opinion from a medical professional or other person, on the capacity of the beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary; (4) An opportunity to be represented at no expense to the Government (including by counsel) at any such hearing and to bring a medical professional or other person to provide relevant testimony at any such hearing.⁶

Risk Factors for Violence

The Coalition to Stop Gun Violence has been emphatic in sharing the fact that mental illness diagnosis is *not* an accurate indicator of future violence. Violence has many contributing risk factors and mental illness alone is very rarely the cause. Only 4% of interpersonal violence in the United States is solely attributable to mental illness⁷ and people with mental illness are more likely to be victims of interpersonal violence than perpetrators of violence.⁸ There are, however, certain times, in certain settings, when small sub-groups of people with serious mental illness are at elevated risk of violence, such as the period surrounding a psychiatric hospitalization or first episode of psychosis.^{9,10}

Similarly, there is no one single cause of suicide, and while mental illness (specifically depression) is a risk factor for suicide, not everyone who experiences suicidality or dies by suicide has a mental illness. It is estimated that more than half of all suicide decedents did not have a known mental health diagnosis at the time of their death.¹¹ However, regardless of mental illness diagnosis, veterans as a population are at increased risk for suicide. Veterans account for nearly 1 in 7 of all suicide deaths among U.S. adults and nearly 70% of veteran suicides are by firearm.¹²

Given this evidence, an important question to ask is whether being assigned a fiduciary to manage one's benefits is correlated with risk for future violence. A 2018 study conducted by researchers from the Duke University School of Medicine and the Department of Veterans Affairs Mid-Atlantic Mental Illness Research, Education, and Clinical Center (MIRECC) aimed to answer this question and evaluate the policy in question. As there is limited publicly available information about the population of veterans who have historically been reported to NICS and whether they are at heightened risk of violence, the authors used a large survey database of 3,200 post-deployment veterans from the Iraq and Afghanistan war era. The authors used three proxy measures of fiduciary need to evaluate whether they were associated with either interpersonal violence or suicidality (intellectual disability, illicit drug abuse, and acute psychopathology). The authors found that the rate of suicidality and violence were significantly elevated in veterans who were identified as needing a fiduciary, therefore concluding that, "certain operational definitions of likely need for fiduciary management of a veteran's benefits are indeed significant correlates of dangerousness, albeit indirect and fairly nonspecific indicators."¹³

Additionally, the authors write:

"Ideally, an effective public health approach to restricting firearms access for veterans at risk of harming themselves or others would be targeted broadly, and not limited to those who are proposed



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for a determination of financial incapacity. However, such an approach would also be based on identifying the presence of strong correlates or known indicators of danger to self or others, taking into account an individual's observed risky behaviors and experience over time.”¹⁴

Opposition to H.R. 3450 and H.R. 3826

Despite our concerns with the current firearm restrictions for veterans with fiduciaries, H.R. 3450 and H.R. 3826 both are problematic and would not reform the fiduciary firearm restriction policy in an effective way.

H.R. 3450 would prohibit the VA Secretary from transmitting to any entity in the Department of Justice, for use by the NICS, personally identifying information on veterans and other beneficiaries, solely on the basis of a determination by the Secretary that an individual has a service-connected disability.

As written, H.R. 3450 is illogical since the referral to NICS is *not* based on determinations of a service-connected disability. Rather, it is made pursuant to VA regulation, 38 C.F.R. § 3.353, based on mental competency to manage monetary disbursements, irrespective of service-connected disabilities. As such, H.R. 3450 would not reform the policy, as the text of the bill does not accurately reflect the current policy as it currently exists.

H.R. 3826, the Veterans 2nd Amendment Protection Act, would prohibit the VA Secretary from transmitting to any entity in the Department of Justice, for use by the NICS, personally identifying information on veterans and other beneficiaries, solely on the basis of a determination by the Secretary that an individual has been assigned a fiduciary, “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.”

While H.R. 3826 is more logical than H.R. 3450, we still find many concerns with the bill. Our first concern is regarding what happens to the current beneficiaries whose names are included in NICS. H.R. 3826 does not make clear whether these names would be removed from NICS entirely. While we are not opposed to beneficiaries having their second amendment rights restored, there must be a defined process with sufficient resources provided to make an optimal process. As written, H.R. 3826 does not outline what the restoration process would entail. Thus, our concern is that all beneficiaries currently in NICS would be removed without any meaningful oversight.

Additionally, when the VA only identifies veterans based on incompetence to manage their own benefits, they are *not* making a determination on whether a beneficiary is a danger to themselves or others. We believe the VA should be able to submit names to NICS if a veteran is at risk for violence and while this additional step of judicial review mentioned in H.R. 3826 might be beneficial, the VA cannot electively do this without the needed resources. Moreover, H.R. 3826 does not outline what a new process would entail. In order for a new process to be meaningful and effective, the process must be clearly defined with resources sufficiently appropriated.

Recommendation

The Coalition to Stop Gun Violence supports reforming the VA's current fiduciary firearm prohibition policy, if done in a nuanced, evidence-based way. In its current form, the determination process represents a categorical prohibition that, though well-intentioned, is overbroad and would be greatly improved by incorporating additional findings specifically related to violence risk into the process. We believe that the VA should be able to report the names of veterans to the FBI to be included in NICS, if these beneficiaries



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are in fact at risk of violence. We also support a restoration process for beneficiaries' second amendment rights, if the individual is no longer at risk of violence. However, we do not support restoring all beneficiaries who have been disqualified from purchasing or possessing a firearm because of a fiduciary appointment without a meaningful screening process. Additionally, in order for any new process to be effective, there must be increased funding for judicial review and other administrative needs.

For new determinations

Given the current process in place, we suggest the VA use determinations of financial incapability as part of an initial screen, followed by an individual examination of beneficiaries with specific attention to evidence-based risk factors for dangerousness. Rather than automatically report the names of all beneficiaries to NICS, the names of beneficiaries would be included in NICS only if, after a formal evaluation, the person is deemed to be at risk for violence based on behaviorally-based risk factors.

Behaviorally-based risk factors that do significantly increase an individual's risk of violence, toward self or others, include prior violent behavior,^{15,16,17,18,19,20} including perpetration of domestic violence^{21,22,23} and violent misdemeanors;²⁴ recent violation of a domestic violence protective order or other protective order;²⁵ risky alcohol use;^{26,27} some controlled substance use;^{28,29,30} and cruelty to animals.³¹ In addition, unlawful or reckless use, display, or brandishing of a firearm³² and recent acquisition of firearms, ammunition, or other deadly weapons³³ are also risk factors for future violence.

For names currently in NICS

There should not be a blanket restoration for the more than 150,000 people currently in NICS without a meaningful risk assessment. However, with such a large number of persons, the system would be strongly overburdened if the VA was forced to perform individualized assessments for each of these individuals. As such, we recommend a process for petitioning for restoration, including a formal evaluation, to determine whether these individuals are at risk. Because of the unique dangers posed by possession of firearms, the restoration of that right in particular should be considered using a risk-based approach. Behaviorally-based risk factors should be used in making individual assessments of risk as by a judge in the course of firearm rights restoration decision-making.

Conclusion

We urge Members of the Committee to vote no on H.R. 3450 and H.R. 3826. If the Committee is interested in reforming the VA's fiduciary firearm prohibition policy, we strongly recommend the Committee using a risk-based approach that balances due process and public safety.

¹ 18 U.S.C. § 922(d) (4), (g) (4).

² 27 C.F.R. § 478.11.

³ 38 CFR 3.353

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