



May 1, 2024

The Honorable Mike Bost  
Chair, U.S. House Committee on Veterans  
Affairs  
364 Cannon House Office Building  
Washington, DC 20003

The Honorable Mark Takano  
Ranking Member, U.S. House Committee  
on Veterans Affairs  
364 Cannon House Office Building  
Washington, DC 20003

Dear Chairman Bost and Ranking Member Takano:

We write in strong opposition to H.R. 705, the Veterans 2nd Amendment Protection Act. This bill would eliminate the Department of Veterans Affairs' (VA) ability to transmit to the National Instant Criminal Background Check System (NICS) identifying information about beneficiaries who have been determined to be "mentally incompetent" due to injury or disease through clear and convincing medical evidence, individuals who are at a heightened risk of harm to themselves or others. This legislation threatens public safety and weakens the background check system, one of the most important safeguards against gun violence.

Our nation's suicide crisis is particularly acute for American veterans: more than 6,500 veterans die by suicide each year,<sup>1</sup> and more than 70% of veterans' suicides involve firearms, compared with 48% of all suicides nationwide. In general, easy access to firearms greatly increases the risk of death by suicide, since the presence of a firearm significantly increases the risk that a suicide attempt will be fatal. If we want to address the veteran suicide crisis, we must reduce access to lethal means, especially firearms. Data suggests that the elevated level of suicide amongst the veteran population is associated with veterans' greater access to and use of firearms in suicide attempts.

Earlier this year, Congress passed, as part of the Consolidated Appropriations Act, 2024, a provision that undermined the VA's ability to report beneficiaries to NICS. This provision already prohibits the VA from using appropriated funds to report veterans determined to be "mentally incompetent" to NICS, absent a judicial order or finding of dangerousness. Advancing H.R. 705 would make this permanent without providing the VA with funds, resources, or even time to establish a process to obtain such an order or finding in order to transmit this critical information to the background check system.

In addition, while the Veterans 2nd Amendment Protection Act prevents the VA from reporting a beneficiary's information to NICS for the purposes of prohibiting the transfer of a firearm by a licensed firearm dealer, it does not change federal law or regulations that bar these beneficiaries from possessing a firearm once the VA makes a determination that an individual is "mentally incompetent." As such, these beneficiaries could be arrested, prosecuted, and convicted for purchasing and possessing firearms—all because this legislation prevents the VA from reporting them to NICS to block these illegal gun sales. Violations of 18 U.S.C. § 922(g), which prohibits these beneficiaries from purchasing and possessing firearms, can result in fines and prison sentences of up to 15 years.

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<sup>1</sup> U.S. Department of Veterans Affairs, *National Veteran Suicide Prevention Annual Report, 2019-2023*, available at [https://www.mentalhealth.va.gov/suicide\\_prevention/data.asp](https://www.mentalhealth.va.gov/suicide_prevention/data.asp).

Despite claims to the contrary or concerns about VA beneficiaries being treated “unfairly,” the VA’s incompetency determinations include strong due process procedures to protect the rights of beneficiaries. Before making a determination, the Department provides the beneficiary in question with notice of the proposed determination, the consequences of such determination, and evidence supporting it; an opportunity to request a hearing; an opportunity to present evidence, including evidence from a medical professional or other person, of the beneficiary’s ability to manage their benefits; and the opportunity to be represented, including by counsel, at a hearing and to bring a medical professional or other person to provide testimony at the hearing. Further, beneficiaries may appeal the determination of incompetence at any time and may separately petition to have their firearms rights restored through the VA and the courts.

Under the 21st Century Cures Act, enacted in 2016, there are six separate avenues for VA beneficiaries to challenge this determination, both pre- and post-deprivation of rights, and seek relief from NICS reporting. While this due process is critical to ensure that beneficiaries are not unduly deprived of their rights, it is rarely used. In fact, of the over 22,000 individuals reported to NICS by VA in 2022, only 135 beneficiaries sought to appeal. Of those, only 35 sought relief from NICS reporting.

Given the strong due process procedures in place and the unfortunate role that firearms play in veteran suicide, we urge the Committee to reject this misguided legislation and not advance H.R. 705.

Respectfully,

Brady  
Everytown for Gun Safety  
GIFFORDS