



HOUSE OF REPRESENTATIVES PASSES “NICS IMPROVEMENT ACT OF 2007” WITH TROUBLING AMENDMENTS

June 15, 2007

The United States House of Representatives passed a resolution on June 13, 2007, that would, among other things, provide financial incentives for state officials to send relevant records, including those pertaining to mental health, to the National Instant Criminal Background Check System (“NICS”) in a timely manner. The measure, H.R. 2640, was introduced as H.R. 297 by Representative McCarthy (D-NY) in January of this year and passed by a 434-1 vote.¹ Before it was passed, House sponsors negotiated several compromises with the NRA² that altered the original measure and that cause significant concern.

Original Provisions to Encourage Submission of Records to NICS Databases

As passed, the resolution retains the important objective of the original legislation by encouraging states to submit mental health and other disqualifying records to NICS. State contribution to the NICS database is voluntary³ and the database is dangerously incomplete.⁴

As originally introduced, the measure would:

- Require federal agencies and departments to submit relevant records regularly to NICS;⁵
- Provide financial incentives to states to contribute relevant records to NICS and their own databases;⁶
- Require the Office of the Attorney General to work with states to help improve their data systems;⁷
- Require study and evaluation of the NICS system and reporting of best practices for record collection and transmittal.⁸

¹ Ron Paul (R-TX) cast the only vote against the measure.

² The role of the NRA has been widely reported in the media. *See, e.g.*, Associated Press, *House Tempers Background Checks for Guns*, *The New York Times*, June 14, 2007.

³ *See* 28 C.F.R. 25.4. *See also* LCAV’s May 2007 report, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems*, at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

⁴ For example, according to an FBI press release dated April 9, 2007, only 22 states voluntarily contribute mental health records to NICS. Of these 22 states, some have submitted only one record. Thirteen of the 22 have submitted less than 50 records. *See* Written Testimony of Rachel Brand, Assistant Attorney General for Legal Policy, Department of Justice, submitted for *Lethal Loopholes: Deficiencies in State and Federal Gun Purchase Laws Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight and Government Reform*, 110th Cong. (May 10, 2007).

⁵ H.R. Res. 297, 110th Cong. (2007), § 101.

⁶ *Id.* at §§ 102, 103, 104. The resolution would also allow the Attorney General to withhold portions of funds, provided to states under other federal acts, for failure to submit to NICS a minimum percentage of its records pertaining to federally prohibited purchasers. *Id.* at § 104.

⁷ *Id.* at § 301.

⁸ *Id.* at § 201.

As enacted by the House, H.R. 2640 contains the provisions summarized above.

NRA-Backed Amendments

In addition to the original provisions, H.R. 2640 also includes amendments that significantly compromise the effectiveness of the bill and undermine existing law by making it easier for persons with a history of mental illness to gain access to firearms.

First, some of the mental health records currently submitted to NICS by federal departments or agencies would no longer be included in the NICS database.⁹ Second, federal agencies would be required to establish a program that would allow some mental health histories to be “deemed not to have occurred” for purposes of federal firearms prohibitions. States that fail to establish these programs would be ineligible to receive funds authorized by the measure to be awarded to states to improve their systems for providing records to NICS and state databases.¹⁰

Prohibition on submission of certain mental health records to NICS by federal departments or agencies

One of the most troubling changes made to the original measure is a provision that prohibits federal departments or agencies from providing certain mental health records to NICS. Current law prohibits sale or transfer of a firearm to, and purchase or possession of a firearm by, any person who has been adjudicated as a mental defective or committed to a mental institution.¹¹ H.R. 2640 as passed by the House prohibits submission of federal records regarding mental defective adjudications or commitments to mental institutions if any of several conditions are met. For example, if a mental health patient has been “fully released or discharged from all mandatory treatment, supervision, or monitoring,” the record of his treatment or hospitalization could not be submitted to NICS and the subject would be permitted to purchase and possess a firearm.¹² In addition, federal records of commitments to mental institutions could not be submitted to NICS unless they contain a specific finding that a person is a danger to himself or others or lacks the capacity to manage his own affairs. Federal law currently prohibits anyone who has been involuntary committed from purchasing firearms; this amendment weakens that standard with respect to persons with federal records of commitments to mental institutions. Moreover, the resolution requires the removal of such records that have already been submitted to the NICS database any time prior to the enactment of the measure.¹³

These loopholes would apply primarily to records maintained by the U.S. Department of Veterans Affairs. Many reports have documented the extreme stress levels faced by veterans, making them particularly vulnerable to mental health issues that can lead to violence.¹⁴ These amendments could have the effect of allowing numerous dangerous individuals to obtain guns.

⁹ H.R. Res. 2640, 110th Cong. (2007), § 101.

¹⁰ *Id.* at §§ 103 (c), 105.

¹¹ 18 U.S.C. § 922(d)(4), (g)(4).

¹² H.R. Res. 2640, 110th Cong. (2007), § 101(c)(1)(A).

¹³ *Id.* at § 101(d).

¹⁴ *See, e.g.,* Jim Spencer, *Troops’ Stress Not a Switch that Turns Off*, *The Denver Post*, Aug. 9, 2005, at B-01.

Federal and state implementation of “relief from disabilities” programs

Another alarming provision contained in H.R. 2640 that was not included in the original measure is a requirement that certain federal departments and agencies establish programs allowing individuals who have been adjudicated mentally defective or committed to a mental institution to apply for “relief” from the federal law barring them from purchasing or possessing a firearm.¹⁵ Under the program outlined in the resolution, if the department or agency were to find that the circumstances regarding the adjudication or commitment, and the person’s record and reputation, indicate that he or she will not be a danger to the public in the future, the adjudication or commitment is “deemed not to have occurred” for purposes of laws relating to sale, purchase and possession of firearms.¹⁶

States that fail to establish similar programs would be ineligible to receive funds authorized by the measure to be awarded to states to improve their systems for providing records to NICS and state databases.¹⁷ These amendments create another loophole that would allow persons currently prohibited from purchasing firearms to purchase and possess them, and could provide access to firearms to many potentially dangerous persons with histories of mental illness.¹⁸

Conclusion

LCAV will continue to monitor this measure closely and update you as it moves through the Senate. For additional information or assistance, contact LCAV Staff Attorney Laura Cutilletta at (415) 433-2062 or laura@lcav.org.

¹⁵ *Id.* at § 101(c)(2)(A).

¹⁶ *Id.* at § 101 (c)(2)(B).

¹⁷ *Id.* at §§ 103 (c), 105.

¹⁸ The Violence Policy Center has documented the problems with an earlier federal relief program involving individuals with felony convictions. The program granted relief to thousands of individuals, many of whom were subsequently re-arrested for violent crimes. Violence Policy Center, *Guns for Felons: How the NRA Works to Rearm Criminals* (2000), at <http://www.vpc.org/studies/felons.htm>.