

THE NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM IMPROVEMENT ACT

Mr. Coburn. Mr. President, the intent of the National Instant Criminal Background Check System, NICS, Improvement Amendment Act of 2007 is to increase compliance with existing law in order to prevent guns from getting into the hands of those with mental health concerns who might cause harm to others.

Unfortunately, the initial draft of this legislation would have expanded the existing classes of people forbidden by statute from possessing or purchasing a weapon to include people who simply had trouble managing their finances or other personal affairs. This expansion of existing law would have legitimized overly broad regulations that included people who have never been found to be a danger to themselves or to others.

This is problematic because these overly broad regulations have allowed for the criminalization of veterans who needed help managing the benefits they received for serving our country. These veterans lost their Constitutional right to bear arms without committing a crime, without going before a court of law, and without being found to be a possible danger to themselves or anyone else. Furthermore, they lost their rights without their knowledge, and without a way to restore them.

For this reason I did not consent to H.R. 2640 until these concerns were adequately addressed.

Nobody wants firearms in the hands of individuals who are a danger to themselves or to others, but this desire for safety must be adequately balanced with a respect for our Constitution and the right to bear arms. While I favor keeping guns out of the hands of criminals and those who are a danger to themselves or to others, I was concerned that this bill would unnecessarily and unfairly hurt our veterans and other law-abiding Americans.

The initial version of this bill codified overly-broad regulations for what it means to be “adjudicated as a mental defective” to include individuals who are in no danger to themselves or to others, but cannot manage their own finances or other personal affairs. These regulations were determined independent of Congressional intent and are overly-inclusive.

As a result of this definition, Americans who have never committed a crime and are of no danger to themselves or to others have been unfairly included in NICS. Once added to this list, it has been nearly impossible for an individual to remove their name from this list, meaning they are prohibited from owning a firearm for the rest of their life.

Among those unfairly added are up to 140,000 veterans who receive benefits for their service to our country, because they cannot manage their own affairs. This bill would have made this overly-inclusive definition law.

Fortunately, Senator Schumer and I were able to work together to erase all mention of this definition in the bill. The term “adjudicated as a mental defective,” is not defined in law. By not codifying these overly-inclusive regulations, Congress and the Bureau of Alcohol, Tobacco, and Firearms Enforcement have a another chance to develop regulations for what “adjudicated as a mental defective” means to more accurately protect the Second Amendment rights of law-abiding citizens.

Additionally, we made several other changes to improve this bill. The bill now ensures: Veterans are notified when they are added to this list to ensure they do not knowingly violate Federal law and also lets them know when they enter into a determination process that could lead to them being added to this list; those who believe they have been unfairly added to NICS have their applications for removal from this list processed; those who previously were adjudicated as a mental defective but no longer pose a threat to society are cleared from this list; a state program exists that allows those wrongfully-included on this list to appeal their inclusion; and that compensation is available for those who prove they were wrongfully included on NICS in court.

These changes strike a much healthier balance between ensuring the Second Amendment rights of our veterans and other law-abiding citizens and removing guns from those who are a threat to our society.

It is also important for Americans to realize that this bill, if enacted earlier, would not have prevented the tragic Virginia Tech shootings. This bill does not change Federal

law regarding who should be added to NICS. States still have to decide to what extent they will report those adjudicated as a mental defective to the national list.

Under existing law, the Virginia Tech gunman already was considered a mentally dangerous person and should not have been allowed to purchase a weapon. At the time of the shootings, he was prohibited from purchasing any guns because two different judges found him to be a danger to himself or others. Additionally, the gunman should have been barred from buying a gun because he had been involuntarily committed for mental treatment.

He should have been reported to NICS because of a law passed last decade that required states to report people like him to the Federal system so that they would be prohibited from purchasing weapons. Unfortunately, because of a communications breakdown among Virginia authorities, this did not occur.

Since the Virginia Tech tragedy, several states have begun submitting these records to NICS and added hundreds of thousands of persons to the database without any additional Federal law being passed. According to the Washington Post, nearly 220,000 names have been added to this FBI list of people prohibited from buying guns because of mental health problems – a more than double increase in only 7 months.

While the intent of this legislation is good, Congress owes it to all Americans to pass legislation that is necessary and does not have unintended consequences that compromise the rights of law abiding citizens.

I am thankful for the opportunity for my concerns to be addressed and believe this bill is much improved.