

118TH CONGRESS
1ST SESSION

H. R. 1258

To provide adequate protections for gun owners, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2023

Mr. PERRY introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Appropriations, Veterans' Affairs, Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide adequate protections for gun owners, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Gun Rights
5 and Due Process Act”.

6 **SEC. 2. DEFINITIONS RELATING TO MENTAL HEALTH.**

7 (a) TITLE 18 DEFINITIONS.—Chapter 44 of title 18,
8 United States Code, is amended—

1 (1) in section 921(a), by adding at the end the
2 following:

3 “(38)(A) The term ‘has been adjudicated men-
4 tally incompetent or has been committed to a psy-
5 chiatric hospital’, with respect to a person—

6 “(i) means the person is the subject of an
7 order or finding by a Federal, State, or local ju-
8 dicial officer or court—

9 “(I) that was issued after a hearing—

10 “(aa) of which the person re-
11 ceived actual notice; and

12 “(bb) at which the person had an
13 opportunity to participate with coun-
14 sel; and

15 “(II) that found that the person, as a
16 result of marked subnormal intelligence,
17 mental impairment, mental illness, mental
18 incompetency, mental condition, or mental
19 disease—

20 “(aa) was guilty but mentally ill
21 in a criminal case, in a jurisdiction
22 that provides for such a verdict;

23 “(bb) was not guilty in a criminal
24 case by reason of insanity or mental
25 disease or defect;

1 “(cc) was incompetent to stand
2 trial in a criminal case; or

3 “(dd) was not guilty by reason of
4 lack of mental responsibility under
5 section 850a of title 10 (article 50a of
6 the Uniform Code of Military Jus-
7 tice); and

8 “(ii) does not mean—

9 “(I) an admission to a psychiatric
10 hospital for observation; or

11 “(II) a voluntary admission to a psy-
12 chiatric hospital.

13 “(B) For the purposes of this paragraph, the
14 term ‘order or finding’ does not include—

15 “(i) an order or finding that has expired,
16 been dismissed, or expunged;

17 “(ii) an order or finding that is no longer
18 applicable because a judicial officer or court has
19 found that the person who is the subject of the
20 order or finding—

21 “(I) does not present a danger to him-
22 self or herself or to others;

23 “(II) has been restored to sanity or
24 cured of mental disease or defect;

1 “(III) has been restored to com-
2 petency; or

3 “(IV) no longer requires involuntary
4 inpatient or outpatient treatment by a psy-
5 chiatric hospital; or

6 “(iii) an order or finding with respect to
7 which the person who is subject to the order or
8 finding has been granted relief from disabilities
9 under section 925(c) of this title, under a pro-
10 gram described in section 101(e)(2)(A) or 105
11 of the NICS Improvement Amendments Act of
12 2007 (34 U.S.C. 40911(e)(2)(A); 34 U.S.C.
13 40915), or under any other State-authorized re-
14 lief from disabilities program of the State in
15 which the original commitment or adjudication
16 occurred.

17 “(C) For the purposes of this paragraph, the
18 term ‘actual notice’ means notice that was served to
19 the individually personally and does not mean notice
20 by publication or other general means.

21 “(39) The term ‘psychiatric hospital’ includes a
22 mental health facility, a mental hospital, a sani-
23 tarium, or a psychiatric facility, including a psy-
24 chiatric ward in a general hospital.”; and

25 (2) in section 922—

1 (A) in subsection (d)(4)—

2 (i) by striking “as a mental defective”
3 and inserting “mentally incompetent”; and

4 (ii) by striking “any mental institu-
5 tion” and inserting “a psychiatric hos-
6 pital”; and

7 (B) in subsection (g)(4)—

8 (i) by striking “as a mental defective
9 or who has” and inserting “mentally in-
10 competent or has”; and

11 (ii) by striking “mental institution”
12 and inserting “psychiatric hospital”.

13 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

14 The NICS Improvement Amendments Act of 2007 (34
15 U.S.C. 40902 et seq.) is amended—

16 (1) by striking “as a mental defective” each
17 place that term appears and inserting “mentally in-
18 competent”;

19 (2) by striking “mental institution” each place
20 that term appears and inserting “psychiatric hos-
21 pital”;

22 (3) in section 101(c)—

23 (A) in paragraph (1), in the matter pre-
24 ceding subparagraph (A), by striking “to the

1 mental health of a person” and inserting “to
2 whether a person is mentally incompetent”; and

3 (B) in paragraph (2)—

4 (i) in subparagraph (A)(i), by striking
5 “to the mental health of a person” and in-
6 serting “to whether a person is mentally
7 incompetent”; and

8 (ii) in subparagraph (B), by striking
9 “to the mental health of a person” and in-
10 serting “to whether a person is mentally
11 incompetent”; and

12 (4) in section 102(c)(3)—

13 (A) in the paragraph heading, by striking
14 “AS A MENTAL DEFECTIVE OR COMMITTED TO
15 A MENTAL INSTITUTION” and inserting “AS
16 MENTALLY INCOMPETENT OR COMMITTED TO A
17 MENTAL INSTITUTION”; and

18 (B) by striking “mental institutions” and
19 inserting “psychiatric hospitals”.

20 **SEC. 3. PROTECTING THE SECOND AMENDMENT RIGHTS OF**
21 **VETERANS.**

22 (a) DEFINITION.—In this section, the term “covered
23 veteran” means a person who, on the day before the date
24 of enactment of this Act, is considered to have been adju-
25 dicated as mentally incompetent or committed to a psy-

1 chiatric hospital under subsection (d)(4) or (g)(4) of sec-
2 tion 922 of title 18, United States Code, as a result of
3 having been found by the Secretary of Veterans Affairs
4 to be mentally incompetent.

5 (b) REVIEW AND CERTIFICATION.—

6 (1) REVIEW.—The Secretary of Veterans Af-
7 fairs shall not later than 90 days after the date of
8 enactment of this Act, conduct a review relating to
9 each covered veteran to determine whether the pro-
10 ceedings for the adjudication or commitment of the
11 covered veteran were conducted in accordance with,
12 and resulted in an order or finding described in, sec-
13 tion 921(a)(38) of title 18, United States Code (as
14 added by this Act).

15 (2) CERTIFICATION.—The Secretary of Vet-
16 erans Affairs shall certify that the proceedings under
17 paragraph (1) were conducted in accordance with,
18 and resulted in an order or finding described in, sec-
19 tion 921(a)(38) of title 18, United States Code (as
20 added by this Act), ensure that the records of the
21 covered veteran used for purposes of any determina-
22 tion of whether the covered veteran is disqualified
23 from possessing or receiving a firearm under sub-
24 section (g) or (n) of section 922 of title 18, United
25 States Code, are modified to indicate that the cov-

1 ered veteran has not been adjudicated mentally in-
2 competent or committed to a psychiatric hospital.

3 (c) ENFORCEMENT.—

4 (1) IDENTIFICATION OF INACCURATE
5 RECORDS.—Not later than January 1 of each year,
6 the Attorney General shall—

7 (A) review the record of each person who
8 is considered to have been adjudicated mentally
9 incompetent or committed to a psychiatric hos-
10 pital by the Secretary of Veterans Affairs under
11 subsection (d)(4) or (g)(4) of section 922 of
12 title 18, United States Code, as a result of hav-
13 ing been found by the Secretary of Veterans Af-
14 fairs to be mentally incompetent;

15 (B) identify each record reviewed under
16 subparagraph (A) that does not include docu-
17 mentation indicating that the proceedings for
18 the adjudication or commitment were conducted
19 in accordance with, and resulted in an order or
20 finding described in section 921(a)(38) of title
21 18, United States Code, as added by this Act;
22 and

23 (C) submit to the Secretary of the Treas-
24 ury and the Committee on the Judiciary and
25 the Committee on Veterans' Affairs of the

1 House of Representatives and the Committee
2 on the Judiciary and the Committee on Vet-
3 erans' Affairs of the Senate a report providing
4 the number of records identified under subpara-
5 graph (B) in the previous year.

6 (2) RESCISSION.—Effective on the date on
7 which the Attorney General submits a report under
8 paragraph (1)(C), there is rescinded from the unob-
9 ligated balances in the appropriations account ap-
10 propriated under the heading “GENERAL ADMINIS-
11 TRATION” under the heading “DEPARTMENTAL AD-
12 MINISTRATION” under the heading “DEPART-
13 MENT OF VETERANS AFFAIRS” the amount
14 equal to the product of—

15 (A) the number of records that the report
16 states were identified by the Attorney General
17 under paragraph (1)(B); and

18 (B) \$10,000.

19 (d) APPOINTMENT OF FIDUCIARIES.—

20 (1) IN GENERAL.—Chapter 55 of title 38,
21 United States Code, is amended by adding at the
22 end the following:

23 **“§ 5511. Use of determinations.**

24 “No determination by the Secretary that benefits
25 under this title to which an individual is entitled shall be

1 paid to a fiduciary shall be considered to be a determina-
2 tion that the individual has been adjudicated mentally in-
3 competent for purposes of subsections (d)(4) and (g)(4)
4 of section 922 of title 18.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for chapter 55 of title 38, United States Code,
7 is amended by adding at the end the following:

“5511. Use of determinations.”.

8 **SEC. 4. USE OF DETERMINATIONS MADE BY THE COMMIS-**
9 **SIONER OF SOCIAL SECURITY.**

10 (a) TITLE II.—Section 205(j) of the Social Security
11 Act (42 U.S.C. 405(j)) is amended by adding at the end
12 the following:

13 “(11) No determination by the Commissioner of So-
14 cial Security with respect to an individual, including a de-
15 termination that benefits under this title to which such
16 individual is entitled shall be paid to a representative
17 payee, shall be considered to be a determination that the
18 individual has been adjudicated mentally incompetent for
19 purposes of subsection (d)(4) or (g)(4) of section 922 of
20 title 18, United States Code.”.

21 (b) TITLE XVI.—Section 1631(a)(2) of such Act (42
22 U.S.C. 1383(a)(2)) is amended by adding at the end the
23 following:

24 “(J) No determination by the Commissioner of Social
25 Security with respect to an individual, including a deter-

1 mination that benefits under this title to which such indi-
2 vidual is entitled shall be paid to a representative payee,
3 shall be considered to be a determination that the indi-
4 vidual has been adjudicated mentally incompetent for pur-
5 poses of subsection (d)(4) or (g)(4) of section 922 of title
6 18, United States Code.”.

7 (c) ENFORCEMENT.—

8 (1) IDENTIFICATION OF INACCURATE
9 RECORDS.—Not later than January 1 of each year,
10 the Attorney General shall—

11 (A) review the record of each person who
12 is considered to have been adjudicated mentally
13 incompetent or committed to a psychiatric hos-
14 pital under subsection (d)(4) or (g)(4) of sec-
15 tion 922 of title 18, United States Code, as a
16 result of a determination by the Commissioner
17 of Social Security Administration;

18 (B) identify each such record that does not
19 include documentation indicating that the pro-
20 ceedings for the adjudication or commitment
21 were conducted in accordance with, and re-
22 sulted in an order or finding described in, sec-
23 tion 921(a)(38) of title 18, United States Code,
24 as added by this Act; and

1 (C) submit to the Secretary of the Treas-
2 ury and Congress a report providing the num-
3 ber of records identified under subparagraph
4 (B).

5 (2) RESCISSION.—

6 (A) IN GENERAL.—Effective on the date
7 on which the Attorney General submits a report
8 under paragraph (1)(C), there is rescinded from
9 the unobligated balances in the Federal Old-
10 Age and Survivors Insurance Trust Fund, the
11 Federal Disability Insurance Trust Fund, the
12 Federal Hospital Insurance Trust Fund, and
13 the Federal Supplementary Medical Insurance
14 Trust Fund, on a pro rata basis, the amount
15 equal to the product of—

16 (i) the number of records that the re-
17 port states were identified by the Attorney
18 General under paragraph (1)(B); and

19 (ii) \$10,000.

20 (B) TREATMENT OF AMOUNTS.—Amounts
21 rescinded under subparagraph (A) shall be
22 deemed to have been expended for costs de-
23 scribed in section 201(g)(1) of the Social Secu-
24 rity Act (42 U.S.C. 401(g)(1)).

1 **SEC. 5. STATE HEALTH REPORTS.**

2 Section 102(c)(3) of the NICS Improvement Amend-
3 ments Act of 2007 (18 U.S.C. 922 note) is amended by
4 adding at the end the following: “A report made available
5 by a State indicating that a person has been adjudicated
6 as mentally incompetent or committed to a mental institu-
7 tion shall not be used for purposes of any determination
8 of whether a person is disqualified from possessing or re-
9 ceiving a firearm under subsection (g) or (n) of section
10 922 of title 18, United States Code, unless the Attorney
11 General determines that the proceedings for the adjudica-
12 tion or commitment were conducted in accordance with,
13 and resulted in an order or finding described in, section
14 921(a)(38) of title 18, United States Code, and that the
15 State has provided clear and convincing evidence that the
16 person poses an imminent and significant danger.”.

17 **SEC. 6. APPLICABILITY OF AMENDMENTS.**

18 With respect to any record of a person prohibited
19 from possessing or receiving a firearm under subsection
20 (d)(4) or (g)(4) of section 922 of title 18, United States
21 Code, before the date of enactment of this Act, the Attor-
22 ney General shall remove such a record from the National
23 Instant Criminal Background Check System—

24 (1) upon being made aware that the person is
25 no longer considered as adjudicated mentally incom-
26 petent or committed to a psychiatric hospital accord-

1 ing to the criteria under paragraph (38)(A)(i)(II) of
2 section 921(a) of title 18, United States Code (as
3 added by this Act), and is therefore no longer pro-
4 hibited from possessing or receiving a firearm;

5 (2) upon being made aware that any order or
6 finding that the record is based on is an order or
7 finding described in paragraph (38)(B) of section
8 921(a) of title 18, United States Code (as added by
9 this Act); or

10 (3) upon being made aware that the person has
11 been found competent to possess a firearm after an
12 administrative or judicial review under section 5511
13 of title 38, United States Code (as added by this
14 Act).

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