

The Protecting Communities and Preserving the Second Amendment Act of 2021

Senators Grassley, Cruz, and Tillis

Issue

Federal law requires federal agencies, law enforcement, and states to report records of individuals who are prohibited from acquiring or possessing a firearm to the National Instant Criminal Background Check System (NICS). However, some entities have failed to consistently report relevant records, including certain mental health records, in a timely manner. As a result, prohibited persons may be erroneously approved to purchase a firearm following a background check.

Legislative Solution

The *Protecting Communities and Preserving the Second Amendment Act of 2021* improves the NICS system by incentivizing and ensuring that relevant records are uploaded to the database in a timely and consistent manner. The legislation also defines and clarifies what it means to be prohibited from possession of a firearm due to mental incompetence or being committed to a mental health institution. The legislation also requires relevant reports to Congress, requires cabinet or sub-cabinet approval for any DOJ operation that will involve “gun walking,” and commissions a study on the causes of mass shootings.

NICS Improvement

- Authorization of appropriations for \$20 million per year for 5 years (2022 through 2026);
- Creates reporting requirements to ensure that agencies inform Congress of their existing NICS records, NICS submissions, and protocols related to prohibiting mental health determinations;
- Incentivizes states to submit relevant mental health records to NICS through an increase in grant funding for “compliant” states.

Mental Health: Mental Incompetence & Commitment to a Psychiatric Hospital

- Changes operative definition related to mental health from “mental defective” and “committed to a mental institution” to “mentally incompetent” and “committed to a psychiatric hospital”;
- Provides due process protections for individuals prior to being adjudicated mentally incompetent;
- Clarifies that an order finding mental incompetence can be set aside or no longer be applicable based upon a prohibited individual’s change in mental health.

Law Enforcement and Prosecution Prioritization

- Increases the maximum sentences for straw purchases, firearms trafficking, and lying and buying offenses;
- Amends the criminal prohibition on exporting or smuggling firearms to cover terrorist activities.

Reports to Congress

- Requires DOJ to annually report to Congress regarding firearms prosecutions, declinations, and convictions; as well as the number of persons who were denied firearms during the background check process and, of those denied, how many were prosecuted;
- Requires the Office of Management and Budget to provide a report to Congress regarding the amount of ammunition purchased, used, stockpiled, and needed by each Federal agency.

Additional Provisions

- Requires that any DOJ component that contemplates the investigative tactic of “gun walking” must obtain direct approval of the Attorney General, Deputy Attorney General, or the Assistant Attorney General of the Criminal Division;
- Requires the Director of the National Institutes of Justice and National Academy of Sciences to study and generate a report for Congress on the causes of mass shootings.