

*By Mike Hammond, legislative counsel to GOA
June 13, 2007*

It can hardly be any surprise that anti-gun House members worked to sneak this bill through before anyone was aware that it was going to be considered. The negotiations have left legislation which is WORSE THAN THE ORIGINAL McCARTHY BILL.

The worst aspect is, in section 3(2), that it STATUTORILY FREEZES IN regulations at 27 CFR 478.11 which would make you a "prohibited person" if:

* You were found by any "lawful authority" (including a IDEA school therapist, a Medicare psychologist, or a VA doctor to:

1. Represent even a minimal suicide risk;
2. Represent even a minimal playground risk to other students; or
3. Be incapable of managing your own affairs; or

* Were referred by such "lawful authority" to a psychiatrist or psychologist to be evaluated in connection with child custody proceedings or other contexts in which professional assessment is ordered.

This means that a future hypothetical pro-gun administration would be powerless to change the regulations so that they did not apply to:

- Veterans with post-traumatic stress disorder;
- Kids put on Ritalin in connection with the IDEA program;
- Seniors diagnosed with Alzheimer's in connection with Medicare's home health care assistance; or
- Seniors (perhaps with a gun collection accumulated over a lifetime) who continue to live in their homes, but are put under guardianship by their adult children.

In the pretense of doing gun owners some huge favor, the bill explicitly recognizes, in section 101(c)(1)(C), that a psychiatrist's finding is sufficient to make you a prohibited person, so long as that finding is based on one of the three criteria listed above. And, incidentally, when a kid is put on Ritalin, mom is diagnosed with Alzheimer's, a vet is found to have post-traumatic stress disorder, or gramps is put under a guardianship, it is ALMOST ALWAYS based, in whole or in part, on one of those three factors.

The bill, in section 101(c)(2)(A) and section 105, also requires federal agencies like the Department of Veterans Affairs and states to set up procedures for prohibited persons with

"mental disabilities" to "clear their names." There are at least four problems with this:

1. First, prior to this bill, vets suffering from post-traumatic stress disorder were arguably not required to "clear their names." Ditto, seniors with Alzheimer's kids on Ritalin, etc. By statutorily codifying 27 CFR 478.11, this bill, for the first time, makes it statutorily mandated that these persons ARE and SHOULD BE prohibited persons under 18 USC 922 (d) & (g). So the bill makes it absolutely clear that vets, seniors, and adults who were problem kids are statutorily prohibited from owning guns (for life), and then graciously opens the possibility that they may *ap*
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for relief, in accordance with unspecified standards based wholly on the discretion of the government.

2. Second, there already is a procedure for persons to "clear their names." It was created by McClure-Volkmer and is contained at 18 USC 925(c). The problem is that, for many years, Congress, on appropriations bills, has barred anyone from using this procedure. So, having blocked procedures allowing people to "clear their names," the House is now creating redundant procedures to do the same thing. And they expect us to trust them?

3. Third, the bill states that "[r]elief and judicial review shall be available according to the standards prescribed in section 925(c) of title 18, United States Code." But, since Congress has blocked the implementation of section 925(c), there is at least a question of whether this new, redundant procedure would not be similarly automatically blocked, at least at the federal level.

4. Fourth, there is also a procedure for "clearing one's name" in subsection (g) of the Statutes-at-Large portion of the Brady Law, when the name is erroneously submitted to NICS. The problem is that persons seeking to invoke this procedure to establish that they were incorrectly classified are routinely sent a form letter denying relief.

Ironically, a particularly dangerous person who is actually held in a mental institution may be able to obtain relief after he is "released or discharged," pursuant to section 101(c)(1)(A). But a person who is found to be suffered from post-traumatic stress disorder, childhood behavioral problems, or Alzheimer's -- and who is not held anywhere (or subjected to anything) from which they can be "released or discharged" -- could never take advantage of a provision which is available to the criminally insane. And even this limited provision applies only to federal agencies, and not states.

Incidentally, if Congress appropriates NOTHING to implement this bill, the states will still be required to comply with the unfunded mandates or risk loss of DOJ funds under section 104.

All of this is on top of the usual concerns that the McCarthy bill would still require the states to turn over 90% of all information which was "relevant" to whether an individual was a prohibited person by reason of being "an unlawful user of or addicted to" any controlled substance or a mental defective (as that term will now be defined.).

Ironically, given the "tough enforcement" language being used to try to dislodge the "amnesty" bill, the new draft excludes crackdowns on illegal aliens -- a category which, more than any other, includes terrorists who have snuck into our country. But the Attorney General, without a court order, can, at his or her unilateral discretion, demand any information held by any state (or its agent) which would be "relevant" in determining who fell into other categories, including Medicare medical records, IDEA medical records, National guard medical records, drug diversion records, records of drug charges not prosecuted, etc. And, unlike the convicted serial killer, the unprosecuted marijuana smoker, veteran, or senior would not be protected merely because his records were not available electronically.

And, finally, having compiled, potentially, the biggest list of dangerous persons in existence, the records could not be used to go after terrorists or other criminals.

SUMMARY: It was not the intention of 18 USC 922 (d) & (g) to make veterans, seniors, and misbehaved kids "prohibited persons" with an FBI dossier. Any provision in 27 CFR 478.11 to the contrary is just plain wrong, and should be changed. To freeze these regulations into statutory law is simply evil.