

Written by Gun Owners
Tuesday, 11 September 2007 05:00

**GOA Communication To The Senate
with required amendments
Oppose Leahy's Veterans Disarmament Act!
-- GOA will rate bill as anti-gun vote**

From Larry Pratt, Executive Director
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September 11, 2007

Dear Senator:

Gun Owners of America is steadfastly opposed to the Leahy-McCarthy bill -- it only has a House number now (H.R. 2640). The legislation threatens to disqualify millions of new gun owners who are not a threat to society. If this bill is signed into law, as many as a quarter to a third of returning Iraq veterans could be prohibited from owning firearms -- based solely on a diagnosis of post-traumatic stress disorder.

But the military veterans are just the tip of the iceberg. People who have committed minor MISDEMEANORS will also find their names added to the NICS system -- people who have committed very slight offenses that include pushing, shoving or, in some cases, merely yelling at a family member [section 203(3) of the Leahy bill]. These Americans will no longer be able to buy a gun if they are added into the NICS system!

Furthermore, many other law-abiding citizens will be swept into the gun control net because of the ever-expanding meaning of two key terms: "adjudicate" and "mental defective." To this end, I would like to address two important areas of confusion.

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1. Expansion of the Brady Law. You will be told that people cannot have their names put into the gun ban list of the Brady Instant Check (NICS) unless they have been "adjudicated" as a mental defective. At one time, the term "adjudicate" referred to an official pronouncement that comes from a court, magistrate, or other judicial authority.

But the Leahy-McCarthy bill codifies BATFE regulations, so that it will now only take a "lawful authority" to adjudicate someone as a mental defective.¹ And another section of the bill makes it clear this adjudication does not need to be made by a formal court, but can simply be a "determination" -- such as a medical diagnosis by a psychiatrist.²

Such a definition of "adjudicate" does away with due process.

A "mental defective" once meant that one was found "not guilty by reason of insanity." Now a person can lose their rights because he or she has been "adjudicated" by a psychiatrist who has determined that such a person could be a danger to self or to others -- or simply cannot manage his affairs.

By the way, in its open letter of May 9, 2007, BATFE makes it clear that this "danger" doesn't have to be "imminent" or "substantial," but can include "any danger" at all -- even an infinitesimal risk. How many shrinks are ever going to clear a person based on this standard?

During the Clinton administration, some 83,000 veterans diagnosed (not convicted of anything) with Post Traumatic Stress Disorder had their names illegally placed in the NICS system. This illegal action would be rubber-stamped if the Leahy-McCarthy bill becomes law, as other names of veterans with PTSD would soon be added.

No wonder the Military Order of the Purple Heart is opposed to the Leahy-McCarthy bill. On June 18 of this year, the group stated, "For the first time the legislation, if enacted, would statutorily impose a lifetime gun ban on battle-scarred veterans."

2. The supposed promise of relief for gun owners in Leahy-McCarthy. Proponents of the legislation want us to think this measure will benefit many gun owners by giving them a way to

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regain their rights after being added into the NICS system. But what sort of trade-off is it to create potentially millions of new prohibited persons -- under this legislation -- and then tell them that they need to spend thousands of dollars to regain the rights THAT WERE NOT THREATENED before this bill was passed?

The McClure-Volkmer of 1986 created a path for restoring the Second Amendment rights of prohibited persons. But given that Chuck Schumer has successfully pushed appropriations language which has defunded this procedure since the 1990s (without significant opposition), it is certainly not too difficult for some anti-gun congressman like Schumer to bar the funding of any new procedure for relief that follows from the Leahy-McCarthy bill.

Incidentally, even before Schumer blocked the procedure, the ability to get "relief from disabilities" under section 925(c) was always an expensive long shot. Presumably, the new procedures in the Veterans Disarmament Act will be the same.

The above concerns can only be addressed by adoption of the attached amendments. Passage of Leahy-McCarthy without these amendments will be viewed as passage of an anti-gun measure.

Sincerely,

Larry Pratt
Executive Director

1 Section 203(2) of the Leahy bill codifies 27 CFR 478.11.

2 See Section 101(c)(1)(C).

Gun Owners of America Amendments

Amendment A

At the appropriate place, add the following:

"Notwithstanding any other provision of law or of this Act, the name of a veteran, disabled child, or other person suffering from a disability may be made available to the National Instant Criminal Background Check System pursuant to 18 U.S.C. 922(g)(4) only pursuant to a finding of a judge, magistrate, or other judicial authority. It shall be unlawful for the National Instant Criminal Background Check System to maintain the name of any veteran who was discharged under honorable conditions and who has not been subject to a finding of a judge, magistrate, or other judicial authority pursuant to the provisions of this paragraph. Any person whose name continues to be unlawfully retained by the National Instant Criminal Background Check System in violation of the provisions of this paragraph may, beginning on the day six months from the date of enactment of this Act, bring an action against the National Instant Criminal Background Check System in the district court for the district in which such person resides, and, upon a finding that such person's name has been unlawfully retained, shall be awarded actual damages, attorneys' fees, and liquidated damages of \$5,000."

Amendment B

"A person shall not be prohibited from acquiring, possessing, or selling a firearm under subsections (d) and (g) of section 922, Title 18, United States Code, because of a diagnosis of bipolar disorder, post-traumatic stress disorder (PTSD), or attention deficit disorder (ADD) or attention deficit and hyperactivity disorder (ADHD)."

Amendment C

In section 203, paragraph (2), strike "on the date of the enactment of this Act" and insert in lieu thereof "on July 26, 2007".

EXPLANATION: This amendment would prohibit BATFE from changing the terms of the statute by changing its regulations between now and enactment.

Amendment D

In section 203, before the period at the end a semicolon, add the following: "provided, however, that a soldier or veteran, honorably discharged, is not, by virtue of his service and the trauma suffered in connection with his service, prohibited from shipping, transporting, possessing, receiving, selling, or disposing of a firearm under paragraph (4) of section 922(d) and 922(g) of title 18, United States Code."

EXPLANATION: This amendment would make it clear that veterans suffering from PTSD are not prohibited persons.

Amendment E

In section 203, before the period at the end a semicolon, add the following: "provided, however, that a person who, having been a child participating in a program under the Individuals With Disabilities Education Act, shall not be prohibited from shipping, transporting, possessing, receiving, selling, or disposing of a firearm under paragraph (4) of sections 922(d) and 922(g) of title 18, United States Code, by virtue of a diagnosis in connection with such program".

EXPLANATION: This amendment would make it clear that a kid in the IDEA program wouldn't have his diagnosis make him a prohibited person.

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