

Social Security Beneficiary 2nd Amendment Rights Protection Act (H.R. 3516)

The bill prohibits the use of determinations made by the Social Security Administration (SSA) from being used as an adjudication of mental defect.

Background

By law¹ individuals are prohibited from owning a firearm for a variety of reasons, including if he or she has been adjudicated as “mentally defective.” To be determined mentally defective requires a court, board, or other lawful authority find that the person is a danger to him or others, or is unable to contract or manage his own affairs.²

Individuals who are adjudicated as “mentally defective” are entered into the National Instant Criminal Background Check System (NICS), which is used to prevent sales to individuals, such as felons, drug addicts and illegal immigrants.

Currently, the SSA Office of the Inspector General (OIG) refers individuals who are engaging in criminal activity³ to the NICS database. And, as of June 30, 2015, the SSA OIG has made 123 submissions to the NICS.

In certain cases, the SSA will appoint a “representative payee” to manage an individual’s benefit. *This is not a determination of “mental defectiveness.”* It is different than other legal determinations of an inability to manage one’s affairs, such as guardianship.

On January 16, 2013, President Obama issued a memorandum requiring agencies to identify and submit information to NICS. The SSA was one of the 8 agencies specifically named in the memorandum.

In response to this memorandum, the SSA may expand the number of individuals who are referred to the NICS database, which could affect up to 4.2 million Americans.

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In response, Chairman Johnson has introduced legislation that would prevent any determination of the Commissioner of Social Security being used to adjudicate an individual as “mentally defective.”

The bill is supported by the National Rifle Association and positively reviewed by the National Council on Disability.

¹ 18 USC 922(d) and (g).

² Regulations define adjudication of mentally defective as a determination by a court, board commission, or other lawful authority that the person is a danger to himself or others, or is unable to contract or manage his own affairs.

³ Letter to Chairman Ryan, August 7, 2015