



**STATEMENT FOR THE RECORD  
OF  
MR. COLE LYLE  
DIRECTOR  
NATIONAL VETERANS' AFFAIRS AND REHABILITATION DIVISION  
THE AMERICAN LEGION**

**TO THE**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**"Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights."**

**JANUARY 23rd, 2025**

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**ON**  
**“CORRECTING VA’S VIOLATIONS OF VETERANS’ DUE PROCESS AND SECOND**  
**AMENDMENT RIGHTS.”**

**JANUARY 23<sup>rd</sup>, 2025**

Chairman Luttrell, Ranking Member Pappas and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs; on behalf of National Commander James LaCoursiere Jr. and The American Legion, the country’s largest patriotic wartime service organization for veterans, comprising 1.6 million members and serving every man and woman who has worn the uniform for this country, we thank you for the opportunity to offer this statement for the record on the following pending and draft legislation.

The American Legion is directed by active Legionnaires who dedicate their time and resources to serve veterans, servicemembers, their families, and caregivers. As a resolution-based organization, our positions are guided by more than 105 years of advocacy and resolutions that originate at the grassroots level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

The Department of Veterans Affairs (VA) Fiduciary Program was created in 1930 to help veterans with issues managing their own finances due to mental illness, age, injuries, etc.<sup>1</sup> When VA receives medical documents or court decrees showing a veteran is incapable of handling personal finances, a determination of mental incompetence will be proposed. As part of this process, the VA will determine a veteran is a “mentally incompetent person” if they are “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.” This determination for the Fiduciary Program does *not* include any consideration of a propensity for violence or being considered a threat to themselves or others, and is only for financial purposes. So, for example, a veteran who indicates a traumatic brain injury, and is experiencing short-term memory loss that affects their ability to manage their finances, could be determined to be “mentally incompetent”. Unfortunately, as written, this designation triggers the restrictions of the other purposes of that incompetency determination.

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<sup>1</sup> Department of Veterans Affairs, Veterans Benefits Administration. “Fiduciary: Program Description,” last modified February 7, 2024, <https://benefits.va.gov/fiduciary/>.

Under the Brady Act of 1993, Congress directed that government agencies report data to the Department of Justice (DOJ) on any person whose receipt or possession of firearms violated the Gun Control Act of 1968. This Act prohibits certain classes of persons from purchasing or possessing firearms and ammunition, including those who have been “adjudicated as a mental defective” or have been committed to a mental institution.<sup>2</sup> As a result, the VA’s determination of mental incompetence for fiduciary purposes creates significant unintended consequences for a veteran. When the VA assigns a veteran to the Fiduciary Program, this also requires the reporting of the veteran’s mental incompetency status to the FBI for uploading to the National Instant Criminal Background Check System (NICS). This can legally prohibit the veteran from purchasing, carrying, or even storing a gun. Without any judicial due process in place, this practice is a direct violation of the veteran’s Second Amendment rights.

The American Legion is alarmed by the stark overrepresentation of VA-submitted names in NICS, when compared to submissions made by other federal agencies. Between 1998 and 2020, federal agencies have contributed 263,225 records to NICS, of which 98 percent have been submitted by the VA.<sup>3</sup> The sheer volume of reporting by a single federal agency is concerning, and knowledge of this process may discourage veterans from seeking mental health or behavioral support for fear of losing their Second Amendment rights.

In 2016, Congress passed the 21st Century CURES Act, which mandated the VA take necessary measures before submitting names of veterans who are deemed mentally incompetent to the NCIS, including:

1. Providing notice to the beneficiary of all supporting evidence.
2. Providing notice of the proposed competency finding.
3. Informing the beneficiary of their right to request a hearing with VA.
4. Providing guidance on how to present supporting evidence of their ability to manage benefits received from VA, before determining if a veteran is mentally incompetent.<sup>4</sup>

Despite this effort, The American Legion continues to advocate for further steps in transparency by having VA to spell out, verbatim, the ramifications of a VA “incompetency” determination and how this will affect the veteran’s right to purchase, own, and store firearms. This transparency and notification are of utmost importance, as The American Legion has heard of recent caregiver concerns about the lack of information. Specifically, instances of those seeking enhanced services (such as fiduciary assignment under VA’s Program of Comprehensive Assistance for Family Caregivers [PCAFC]), who were unaware of their veteran’s name being automatically submitted to NICS after being placed on the VA Fiduciary program.<sup>5</sup>

The disparity between the VA and other federal agencies implementation of this law unfairly stigmatizes veterans by erroneously conflating those who are challenged with service-related healthcare issues with those who are inherently dangerous to others. In fact, several studies and

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<sup>2</sup> 18 U.S.C. § 922 (d) (4)

<sup>3</sup> Ibid; *FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS), Active Entries in the NICS Indices as of January 3, 2023*, <https://www.fbi.gov/file-repository/active-entries-in-the-nics-indices-by-state.pdf/view>

<sup>4</sup> Ibid

data from the U.S. Bureau of Justice Statistics show no evidence that military veterans – including those who saw combat - are more prone to lethal violence than the general population.<sup>6</sup> Furthermore, veterans convicted of violent gun-related crimes in the federal prison system account for less than 1% of the entire federal prison population and are almost 7% less likely to be incarcerated for a gun-related charge than the civilian population.<sup>7</sup> As no correlation exists between fiduciary management needs and the likelihood of violence, The American Legion asks VA to stop automatically submitting a veteran’s name to the NICS solely based on the veteran’s mental competency status for enrollment in the Fiduciary Program.

While section 413 of *H.R. 4366, Consolidated Appropriation Act of 2024* temporarily barred the VA from transmitting a veteran’s name to NICS until an order or finding by a judge, magistrate, or other judicial authority of competent jurisdiction was found, that provision expired at the end of FY 2024.<sup>8</sup> The current status quo of a fiduciary determination and referral to NICS that disproportionately affects veterans undermines the spirit of justice veterans served to defend, taking away a constitutionally enumerated right by bureaucratic determination rather than through due process.

The American Legion is grateful for Chairman Bost’s reintroduction of *H.R. 705* to codify and make permanent this safeguard to veterans’ Constitutional rights. As proposed, *H.R. 705* ensures due process and prevents VA from conflating the issue of financial incompetence with being a risk to self and others. The American Legion can wholeheartedly support this legislation through Resolution No. 16, Second Amendment, and Resolution No. 27, Amend Title 38 to Clarify the Treatment of a Veteran as Adjudicated Mentally Incompetent for Certain Purposes.<sup>9</sup>

### **Conclusion**

As always, The American Legion thanks this subcommittee for the opportunity to elucidate the position of the 1.6 million veteran members of this organization. For additional information regarding this testimony, please contact The American Legion Director of the Legislative Division, Julia Mathis, at 202-735-2207 or [jmathis@legion.org](mailto:jmathis@legion.org).

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<sup>6</sup> [Veterans in Prison - Survey of Prison Inmates, 2016](#)

<sup>7</sup> [Federal Offenders Who Served in the Armed Forces](#), United States Sentencing Commission, 2021

<sup>8</sup> U.S. Congress, House, *H.R. 4366 – Consolidated Appropriations Act, 2024*, 118th Cong. 2nd sess., (2024) Section 413, Became Pub. Law No: 118-42 on March 9, 2024, [Actions - H.R.4366 - 118th Congress \(2023-2024\): Consolidated Appropriations Act, 2024 | Congress.gov](#)

<sup>9</sup> The American Legion Resolution No. 16 (2016) [Second Amendment](#); The American Legion Resolution No. 27 (2017): [Amend Title 38, United States Code, to Clarify the Treatment of a Veteran as Adjudicated Mentally Incompetent for Certain Purposes](#)