

FIX NICS ACT MYTHS VS FACTS

The National Shooting Sports Foundation® (NSSF®), the trade association for the firearms, ammunition, hunting and shooting sports industries, strongly supports efforts to improve the FBI’s National Instant Criminal Background Check System (NICS). A background check is only as good as the records in the database. That’s why NSSF launched the FixNICS® campaign in 2013 and worked successfully to reform laws in 16 states, resulting in an increase in the number of disqualifying mental health records in NICS to nearly 5 million, from about 1.7 million, a 200 percent increase.ⁱ

NSSF has endorsed **S. 2135**, the Fix NICS Act by Sen. John Cornyn (R-Texas). However, a number of myths have been raised with regard to the Fix NICS Act. These falsehoods and myths are propagated by groups who are opposed to any background checkⁱⁱ and gun owners who have been misled into believing the bill is an attack on their Second Amendment rights.

MYTH: The grants provided by the bill are bribes to states to send more records to the NICS database.

FACT: States cannot be required by federal law to submit records to NICS – their participation is voluntary. No one wants to see firearms get into the hands of those who are prohibited from possessing them under current law. When the relevant, prohibiting records are not submitted, the background check system cannot effectively screen for prohibited individuals. The question is how do we encourage states

to fully participate in this process, when it requires the states to devote scarce resources to aligning systems and overcoming obstacles to sharing records? Helping mitigate the cost of participating in NICS serves to get more prohibiting records from states to NICS. A more complete and accurate database is the goal. Grants are a proven tool to reach this goal.

MYTH: The NICS system arbitrarily includes records of any veteran diagnosed with post-traumatic stress disorder (PTSD), stripping our veterans of their Second Amendment rights.

FACT: This is false. According to a 2017 Congressional Research Report, the Veterans Health Administration (VHA) has not submitted any disqualifying records on VA medical care recipients to the FBI for inclusion in NICS for any medical/psychiatric reason such as post-traumatic stress disorder. Although veterans with PTSD or any other condition, who have been involuntarily committed under a state court order to a VA medical facility because they posed a danger to themselves or others, are ineligible to ship, transport, receive, or possess a firearm or ammunition under federal law, the VHA does not appear to make a related referral about that ineligibility to the FBI.

Instead, the state in which the court resides may submit the disqualifying record to the FBI, if such a submission would be appropriate and permissible under state law.”

It is true that concerns had been raised in the past about veterans

losing their Second Amendment rights when appointed a fiduciary to help manage their benefits. However, the NSSF-supported 21st Century Cures Act passed in 2016, already addressed the issue.^{iv} Under this law, the following code was established:

*38 U.S. Code § 5501A - Beneficiaries’ rights in mental competence determinations
The Secretary may not make an adverse determination concerning the mental capacity of a beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title unless such beneficiary has been provided all of the following, subject to the procedures and timelines prescribed by the Secretary for determinations of incompetency:*

- (1) Notice of the proposed adverse determination and the supporting evidence.*
- (2) An opportunity to request a hearing.*
- (3) An opportunity to present evidence, including an opinion from a medical professional or other person, on the capacity of the beneficiary to manage monetary benefits paid to or for the beneficiary by the Secretary under this title.*
- (4) An opportunity to be represented at no expense to the Government (including by counsel) at any such hearing and to bring a medical professional or other person to provide relevant testimony at any such hearing.*

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(Added Pub. L. 114–255, div. B, title XIV, § 14017(a), Dec. 13, 2016, 130 Stat. 1307.)

Now, members of Congress such as Senator Chuck Grassley (R-IA), who had expressed concerns about this issue, are signed on as cosponsors of the Fix NICS Act. All 69 bipartisan sponsors understand that the Fix NICS Act doesn't weigh in on who should or should not be considered a prohibited person under federal law. The legislation's sole focus is to make sure the relevant disqualifying records are

included in the database.

MYTH: Some states submit records that should not disqualify an individual from purchasing a firearm, such as unpaid traffic tickets or use of medical marijuana.

FACT: The FBI issued guidance on this in 2017, clarifying that the existence of an active arrest warrant alone is not grounds for the denial of firearm transfers.^{iv} If you are prohibited because you are a “fugitive from justice,” that

has fled a state where there is a warrant for your arrest in order to avoid prosecution, you are prohibited, regardless of whether your records are submitted or not. The same holds true for those who use marijuana for any purpose, as it remains a schedule 1 narcotic under federal law. The Fix NICS Act does not make changes to these issues. The bill does not expand who is a prohibited person under current law. It helps this law be enforced.

i For more information, see FixNICS.org.

ii See for example, “Background Checks: Ineffective, Unconstitutional and Dangerous” <https://www.gunowners.org/fs08112016.htm>

iii Congressional Research Service, “Gun Control, Veterans Benefits, and Mental Incompetency Determinations,” April 5, 2017, R44818 https://www.everycrsreport.com/files/20170405_R44818_d674fc42c3d0a35aa87c5d61f5c8c2f1e75ede0a.pdf

iv Pub.L. 114 – 255, <https://www.congress.gov/114/plaws/publ255/PLAW-114publ255.pdf>

v FBI, February 15, 2017 <https://www.documentcloud.org/documents/3493269-Fugitive-From-Justice-Guidance-State.html>

