

Myths vs. Facts

H.R. 2640, the NICS Improvement Amendments Act of 2007

MYTH:

This bill strengthens the law to block dangerously ill people, like the VA Tech predator, from buying firearms and will close a loophole in the law.

FACT:

The underlying law of who is prohibited from buying and possessing a gun is not altered in any way in this bill. The VA Tech murder was prohibited under existing law. Also, existing law already required the state of Virginia to forward his name to the National Instant Criminal Background Check System (NICS) database.

There was no federal loophole in the law and this bill does not address such a thing in any way. Virginia recognized that they were not complying with the federal requirement and the Governor Tim Kaine issued an executive order (#50) to change the way Virginia reported those in their state who are involuntarily committed to a mental institution for treatment.¹ Virginia was only reporting people committed for inpatient treatment, the Virginia Tech perpetrator, who was found by a court to be an “imminent danger to himself or others” on two occasions was involuntarily committed for out-patient treatment.²

Regardless of the inpatient or outpatient treatment, existing law requires anyone adjudicated by a court to be a danger to himself or others because of their mental state to be added to the system.

According to a statement made by Virginia’s Attorney General, Bob McDonnell, on April 30, 2007:

“Our office was pleased to work with Governor Kaine to quickly remedy this apparent ‘disconnect’ between state and federal law.”³

This bill authorizes funds to help states increase their reporting and makes them ineligible for certain law enforcement grants if they do not report up to 90 percent of the people who are required to be reported within 10 years.

¹ http://www.governor.virginia.gov/Initiatives/ExecutiveOrders/2007/EO_50.cfm

² For a copy of the temporary detention order dated December 13, 2005, go to [<http://news.findlaw.com/nytimes/docs/vatech/seunghui2005ord.html>]. and For a copy of the petition, go to [<http://news.findlaw.com/nytimes/docs/vatech/seunghui2005ord.html>].

³ <http://www.governor.virginia.gov/MediaRelations/NewsReleases/viewRelease.cfm?id=399>

Dr. Coburn is concerned that these authorized funds are not offset by cutting lower priority programs. He also recognizes that all but one state ran a surplus but the federal government annually spends more money than it has.

Finally, this bill will not just focus on dangerous people. The bill will also ensure that agencies, including the Veterans Affairs Department (VA), report people to the background check system who are

- (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
 - 1. Is a danger to himself or to others; or
 - 2. *Lacks the mental capacity to contract or manage his own affairs.*

- (b) The term shall include a finding of insanity by a court in a criminal case.

Dr. Coburn is concerned that the second prong, “lacks the mental capacity to contract or manage his own affairs” is overly broad and will include people, veterans especially, who should not be included. These individuals will never be determined to be a danger to themselves or others – which is the appropriate standard. We know that this standard (which is not currently law but a definition created by an agency) has forced the VA to include people who have been unable to manage their VA benefits because they were in a coma. They may have later recovered but are permanently barred from gun ownership. Furthermore, most of these individuals do not know that they are barred and are consequently in violation of federal law and can be punished by up to 10 years in federal prison.

MYTH:

If this bill had been in place, the Virginia Tech tragedy would not have occurred.

FACT:

As stated above, the law is not changed in this bill. If the states, Virginia specifically, had been in full compliance with the federal reporting requirements the mentally dangerous Virginia Tech perpetrator would not have been able to buy a gun.

Further, though, the proponents of this bill cite the \$400 million in funds it authorizes as reason to believe that states will increase compliance and therefore tragedies like Virginia Tech will no longer occur.

This is simply not the case.

Title 42 U.S. Code 14601 authorized a grant program to help states comply with the transmittal of information required by the Brady bill (NICS compliance). This program was authorized at \$250 million for fiscal years 2002 through 2007. This program, in the two most recent fiscal years received only \$10 million, not the \$250 million authorized. Congress was so busy earmarking funds to its pet projects it never bothered to make NICS compliance a priority.

Because Congress fails to prioritize in authorizations, their good intentions are not able to be delivered.

As the Majority Whip, who is also an appropriator, stated on 4/17/2007:

AUTHORIZING A PROJECT DOES NOT MEAN IT HAS MONEY. AUTHORIZING MONEY DOES NOT MEAN IT HAS MONEY. THAT'S WHY WE HAVE AUTHORIZING COMMITTEES AND APPROPRIATING COMMITTEES. I CAN AUTHORIZE THE SUN, THE MOON, THE STARS AND THE MILKY WAY BUT I WILL NOT DELIVER ANY OF THOSE TO ANYBODY UNTIL I GET TO AN APPROPRIATIONS BILL. SO, ALL -- WHEN I FINISH SPEAKING, I WILL -- AND SO, UNLESS YOU APPROPRIATE THE MONEY FROM THE TREASURY FOR THE PROJECT, IT IS JUST A GOOD IDEA THAT MIGHT HAPPEN. (Not an official transcript).

This is why Dr. Coburn fights to prioritize in authorizing bills so that when money is authorized, it actually means something.