

**AMENDMENT TO RULES COMMITTEE PRINT 115–**

**70**

**OFFERED BY MR. GOHMERT OF TEXAS**

At the end of subtitle G of title X, insert the following:

**1 SEC. 10\_\_\_\_. RESTORATION OF SECOND AMENDMENT PRO-**  
**2 TECTIONS FOR OUR VETERANS.**

**3** (a) IN GENERAL.—Chapter 55 of title 38, United  
**4** States Code, is amended by inserting after section 5501A  
**5** the following new section:

**6 “SEC. 5501B. CONDITIONS FOR TREATMENT OF CERTAIN**  
**7 PERSONS AS ADJUDICATED MENTALLY IN-**  
**8 COMPETENT FOR CERTAIN PURPOSES.**

**9** “(a) IN GENERAL.—Beginning on the date of enact-  
**10** ment of this section, in any case arising out of the admin-  
**11** istration by the Secretary of laws and benefits under this  
**12** title, the Secretary may not determine a veteran to be ad-  
**13** judicated as mentally defective for the purposes of report-  
**14** ing to the National Instant Criminal Background Check  
**15** System under subsection (d)(4) or (g)(4) of section 922  
**16** of title 18 unless the Federal Government, in a court of  
**17** competent jurisdiction, has met the burden of proving, by

1 clear and convincing evidence, that the veteran is mentally  
2 defective.

3 “(b) DETERMINATION OF MENTALLY DEFECTIVE.—

4 The process by which a veteran may be determined to be  
5 mentally defective may be initiated after the Secretary has  
6 a reasonable basis, based on articulable facts that the vet-  
7 eran may be found incompetent to stand trial, not guilty  
8 by reason of insanity, or is likely to use, carry, or possess  
9 a firearm in a manner dangerous to the veteran or the  
10 public due to a mental illness, condition, or disease. The  
11 process by which a veteran may be determined to be men-  
12 tally defective shall not be initiated solely from a deter-  
13 mination from the Secretary that a person requires the  
14 assignment of a fiduciary.

15 “(c) FACTORS TO CONSIDER IN THE COURSE OF DE-

16 TERMINING A MENTALLY DEFECTIVE.—(1) In analyzing  
17 whether a veteran is mentally defective, the Secretary may  
18 consider the veterans reputation, as provided in state-  
19 ments and other evidence relating to the veteran. Any  
20 statement so considered shall—

21 “(A) identify the person supplying the informa-  
22 tion;

23 “(B) provide the person’s complete contact in-  
24 formation, including a current address and telephone  
25 number; and

1           “(C) describe the person’s relationship with the  
2       veteran and frequency of contact.

3           “(2) The Secretary may consider records reviewed in  
4       the course of assigning a fiduciary but the fact that a fidu-  
5       ciary has been assigned may not be considered as a factor.

6           “(3)(A) If such reasonable basis is found to exist, the  
7       Secretary may then proceed to formally determine, based  
8       on clear and convincing evidence, whether a veteran is  
9       mentally defective for purposes of reporting to the Na-  
10      tional Instant Criminal Background Check System.

11          “(B) In analyzing whether a veteran is mentally de-  
12      fective, the Department may consider the veteran’s rep-  
13      utation, as provided in statements and other evidence re-  
14      lating to the veteran. Any statement so considered shall—

15           “(i) identify the person supplying the informa-  
16      tion;

17           “(ii) provide the person’s complete contact in-  
18      formation, including a current address and telephone  
19      number; and

20           “(iii) describe the person’s relationship with the  
21      veteran and frequency of contact .

22          “(d) PROCESS.—If the Secretary concludes that a  
23      veteran is mentally defective is made under subsection (c),  
24      not later than 30 days after that date on which such con-  
25      clusion is made, the Department shall provide notice to

1 the person, in writing, of the medical finding, the rights  
2 and protections afforded by this section, and the effect of  
3 a future judicial ruling with respect to the ability of the  
4 person to own and possess firearms.

5 “(e) REVIEW.—(1) Not later than 60 days after the  
6 date on which a veteran receives notice under subsection  
7 (d), the veteran may request a review by a court of com-  
8 petent jurisdiction to determine whether such person is a  
9 mentally defective.

10 “(2) In making a request under paragraph (1), if the  
11 veteran does not specify a forum, the Federal Government  
12 shall choose the forum.

13 “(3) In making a determination relating to whether  
14 a veteran is mentally defective, a court may consider the  
15 veteran’s honorable discharge or decoration and other  
16 mitigating factors reasonably bearing on whether such  
17 person is mentally defective.

18 “(4) A determination by a court of competent juris-  
19 diction that a person is not mentally defective shall pre-  
20 clude the Secretary from reporting such person to the Na-  
21 tional Instant Criminal Background Check System for the  
22 purpose of prohibiting the acquisition, receipt, transfer,  
23 shipment, transportation, or possession of firearms or am-  
24 munition.

1       “(f) BURDEN OF PROOF.—The burden of proof for  
2 all actions arising under this section shall be on the Fed-  
3 eral Government to prove, based on clear and convincing  
4 evidence, that a person is mentally defective and that bur-  
5 den shall be met before the person may be adjudicated  
6 as a mental defective under subsection (d)(4) or (g)(4) of  
7 section 922 of title 18 for the purposes of reporting to  
8 the National Instant Criminal Background Check System.

9       “(g) REGULATORY CHANGES.—Consistent with the  
10 requirements imposed under this section, the Secretary  
11 shall review all relevant regulations and revise such regula-  
12 tions as necessary.

13       “(h) PERSONS WITH EXISTING RECORDS.—(1) For  
14 veterans with existing records in the National Instant  
15 Criminal Background Check System database supplied by  
16 the Secretary as of the date of enactment of this section,  
17 not later than 90 days after such date of enactment, the  
18 Secretary shall provide written notice of the opportunity  
19 for administrative review or judicial review consistent with  
20 this section.

21       “(2) Each veteran described in paragraph (1) may,  
22 at any time, request judicial review by a court of com-  
23 petent jurisdiction to challenge the placement of the per-  
24 son in the National Instant Criminal Background Check

1 System database consistent with the procedures and  
2 standards set forth in this section.

3 “(3) In an action under this subsection, the failure  
4 of the Federal Government to prove, based on clear and  
5 convincing evidence, that a person is mentally defective  
6 others consistent with the procedures in this section shall  
7 result in the removal of such person’s information from  
8 the National Instant Criminal Background Check System  
9 database.

10 “(i) NEW AND MATERIAL EVIDENCE.—A veteran or  
11 the Federal Government may reopen a case that was fi-  
12 nally adjudicated under this section by submitting new and  
13 material evidence consistent with this section.

14 “(j) DEFINITION OF COURT OF COMPETENT JURIS-  
15 DICTION.—In this section, the term ‘court of competent  
16 jurisdiction’ means the district court of the United States  
17 for the district in which the person who is subject to the  
18 assessment or determination resides.”.

19 (b) CLERICAL AMENDMENT.—The table of sections  
20 at the beginning of chapter 55 of such title is amended  
21 by inserting after the item relating to section 5501A the  
22 following new item:

“5501B. Conditions for treatment of certain persons as adjudicated mentally in-  
competent for certain purposes.”.

