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:

SEC. 10. RESTORATION OF SECOND AMENDMENT PROTECTIONS FOR OUR VETERANS.

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

“SEC. 5501B. CONDITIONS FOR TREATMENT OF CERTAIN PERSONS AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES.

“(a) IN GENERAL.—Beginning on the date of enactment of this section, in any case arising out of the administration by the Secretary of laws and benefits under this title, the Secretary may not determine a veteran to be adjudicated as mentally defective for the purposes of reporting to the National Instant Criminal Background Check System under subsection (d)(4) or (g)(4) of section 922 of title 18 unless the Federal Government, in a court of competent jurisdiction, has met the burden of proving, by
clear and convincing evidence, that the veteran is mentally defective.

“(b) DETERMINATION OF MENTALLY DEFECTIVE.—
The process by which a veteran may be determined to be mentally defective may be initiated after the Secretary has a reasonable basis, based on articulable facts that the veteran may be found incompetent to stand trial, not guilty by reason of insanity, or is likely to use, carry, or possess a firearm in a manner dangerous to the veteran or the public due to a mental illness, condition, or disease. The process by which a veteran may be determined to be mentally defective shall not be initiated solely from a determination from the Secretary that a person requires the assignment of a fiduciary.

“(c) FACTORS TO CONSIDER IN THE COURSE OF DETERMINING A MENTALLY DEFECTIVE.—(1) In analyzing whether a veteran is mentally defective, the Secretary may consider the veteran's reputation, as provided in statements and other evidence relating to the veteran. Any statement so considered shall—

“(A) identify the person supplying the information;

“(B) provide the person's complete contact information, including a current address and telephone number; and
“(C) describe the person’s relationship with the veteran and frequency of contact.

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

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

“(B) In analyzing whether a veteran is mentally defective, the Department may consider the veteran’s reputation, as provided in statements and other evidence relating to the veteran. Any statement so considered shall—

“(i) identify the person supplying the information;

“(ii) provide the person’s complete contact information, including a current address and telephone number; and

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

“(d) PROCESS.—If the Secretary concludes that a veteran is mentally defective is made under subsection (e), not later than 30 days after that date on which such conclusion is made, the Department shall provide notice to
the person, in writing, of the medical finding, the rights and protections afforded by this section, and the effect of a future judicial ruling with respect to the ability of the person to own and possess firearms.

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

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

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

“(4) A determination by a court of competent jurisdiction that a person is not mentally defective shall preclude the Secretary from reporting such person to the National Instant Criminal Background Check System for the purpose of prohibiting the acquisition, receipt, transfer, shipment, transportation, or possession of firearms or ammunition.
“(f) Burden of Proof.—The burden of proof for all actions arising under this section shall be on the Federal Government to prove, based on clear and convincing evidence, that a person is mentally defective and that burden shall be met before the person may be adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 for the purposes of reporting to the National Instant Criminal Background Check System.

“(g) Regulatory Changes.—Consistent with the requirements imposed under this section, the Secretary shall review all relevant regulations and revise such regulations as necessary.

“(h) Persons With Existing Records.—(1) For veterans with existing records in the National Instant Criminal Background Check System database supplied by the Secretary as of the date of enactment of this section, not later than 90 days after such date of enactment, the Secretary shall provide written notice of the opportunity for administrative review or judicial review consistent with this section.

“(2) Each veteran described in paragraph (1) may, at any time, request judicial review by a court of competent jurisdiction to challenge the placement of the person in the National Instant Criminal Background Check
System database consistent with the procedures and standards set forth in this section.

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

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

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

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

“5501B. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.”.