



## The Protecting Communities and Preserving the Second Amendment Act of 2018 – S. 2502

### Issue

Federal law requires federal agencies, law enforcement and states to report records of individuals who are prohibited from acquiring or possessing a firearm to the National Criminal Instant Background Check System (NICS). However, some entities have failed to consistently report relevant records, including certain mental health records, in a timely manner. As a result, prohibited persons may be erroneously approved to purchase a firearm following a background check. Federal law also requires that law enforcement be notified if an individual *currently* listed on one of the suspected terrorist watch lists tries to purchase a firearm.

### Legislative Solution

The *Protecting Communities and Preserving the Second Amendment Act* improves the NICS system by incentivizing and ensuring that relevant records are uploaded to the database in a timely and consistent manner. The legislation also defines and clarifies what it means to be prohibited from possession of a firearm due to mental incompetence or commission to a mental health institution. The legislation also requires relevant reports to Congress, requires cabinet or sub-cabinet approval for any DOJ operation that will involve “gun walking,” and commissions a study on the causes of mass shootings. Finally, the bill includes a provision that requires that law enforcement be notified if an individual who has been investigated as a possible terrorist threat or attempts to acquire a firearm.

### NICS Improvement

- Authorization of appropriations for \$125 million for each of fiscal years 2019-2028;
- Requirement that agencies prioritize the submission of relevant Federal records to NICS;
- Clarifies that Federal court records are to be made available to NICS;
- Agency reporting requirements that inform Congress of their existing NICS records, NICS submissions, and protocol related to prohibiting mental health determinations;
- Incentivizes states to submit relevant mental health records to NICS through an increase in grant funding for “compliant” states.

### Mental Health: Mental Incompetence & Commitment to Psychiatric Hospital

- Changes operative definition related to mental health from “mental defective” and “committed to a mental institution” to “mentally incompetent” and “committed to a psychiatric hospital”;
- Provides front end due process protections for individuals prior to being adjudicated mentally incompetent;
- Clarifies that an order finding mental incompetence can be set aside or no longer be applicable based upon a prohibited individual’s change in mental health.

### Law Enforcement Notification Regarding Current and Previously Suspected Terrorists

- Requires that law enforcement be notified if an individual who is either currently, or within the past five years, was investigated for terrorism and attempts to acquire a firearm.

### Reports to Congress

- Requires DOJ to annually report to Congress regarding firearms prosecutions, declinations, and convictions; as well as the number of persons who were denied firearms during the background check process and of those denied, how many were prosecuted;
- Requires the Office of Management and Budget to provide a report to Congress regarding the amount of ammunition purchased, used, stockpiled, and needed by each Federal agency.

### Additional Provisions

- Requires that any DOJ component that contemplates the investigative tactic of “gun walking” must obtain direct approval of the Attorney General, Deputy Attorney General, or the Assistant Attorney General of the Criminal Division;
- Requires the Director of the National Institutes of Justice and National Academy of Sciences to study and generate a report on the causes of mass shootings.

