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To: The Senate Judiciary Committee  
Re: Follow-up Question from Senator Grassley  
From: William M. Ward  
Date: February 28, 2016

Mr. Chair and Committee Members:

I appreciate the opportunity to answer the following question posed to the panel:

*Given that there are multiple schools of thought on how best to handle the mental health crisis as it relates to mass murders, what do you believe would be the most effective way to keep mentally ill individuals from harming others? Put another way, what can we do to help these ill individuals, but also prevent yet another mass murder?*

I believe it is important to keep in mind that less than 20% of individuals who suffer from a mental illness are considered "dangerous". There is an obvious stigma attached to a diagnosis of being mentally ill. We need to be careful of attempting to craft a "solution" to helping those who are suffering from a mental illness and grouping those who suffer with the ones who are truly considered dangerous. There is no one size fits all solution. No one, no one body can ever completely prevent a mass shooting – no matter the laws or restrictions currently in place or potentially contemplated.

The term *Mental illness* includes a vast and ever inclusive definition – depending on who is speaking or writing on the subject. Obviously, the term covers a multitude of diagnosis. This point is important when we consider individual rights, commitments, treatment and supervision.

I have firm convictions in the Second Amendment and the rights associated with it. However, I also believe that, as a country, we need to have stricter controls on access to firearms and follow protocols that currently restrict an individual – deemed mentally ill or incompetent – from legally obtaining a firearm. While not popular with certain interest groups, background checks – no matter where the weapon is purchased – is an absolute first step. There are way too many "work arounds" in this country at this point.

While I am not an expert on firearm restoration of rights in all of our jurisdictions, I am very familiar with the law in Minnesota. In Minnesota the law reads in part:

## **624.713 CERTAIN PERSONS NOT TO POSSESS FIREARMS.**

**§Subdivision 1. Ineligible persons.** The following persons shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon or, except for clause (1), any other firearm:

(3) a person who is or has ever been committed in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the person's ability to possess a firearm and ammunition has been restored under subdivision 4;

Section 3 clearly defines those individuals who have been judicially determined to be ineligible to possess a firearm due to a mental illness. Please note that it is not only for a diagnosis of being dangerous to the public. This distinction is important. Our legislature has deemed that an individual who has been civilly committed or even incompetent to stand trial should lose their right to possess a firearm.

However, these individuals do have a right to subsequently request that their gun ownership rights be restored. The burden is appropriately placed on the individual. The following Subdivision sets forth this process:

### **Subd. 4. Restoration of firearms and ammunition eligibility to civilly committed person; petition authorized.**

(a) A person who is prohibited from possessing a firearm or ammunition under subdivision 1, due to commitment resulting from a judicial determination that the person is mentally ill, developmentally disabled, mentally ill and dangerous, or chemically dependent, may petition a court to restore the person's ability to possess a firearm or ammunition.

(b) The court may grant the relief sought in paragraph (a) in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that:

(1) the person is not likely to act in a manner that is dangerous to public safety; and  
(2) the granting of relief would not be contrary to the public interest.

(c) When determining whether a person has met the requirement of paragraph (b), clause (1), the court may consider evidence from a licensed medical doctor or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of three consecutive years.

(d) Review on appeal shall be de novo.

While the individual may petition the state of Minnesota for restoration of their gun ownership rights, the federal government does not have this proviso – and it should remain that way. If

Congress chooses to allow an individual in the above described circumstances the right to request restoration, the process should be modeled after the Minnesota Statute.

In addition to a judicial determination of being ineligible to possess a firearm, Minnesota took the obvious next step in reporting this information. In 2013 the Minnesota Legislature passed legislation that directed the courts to report already public civil commitment data to the National Instant Criminal Background Check System (NICS) by July 2014 for use in firearm background checks. Civil commitment data from January 1994 through September 2010 will be included in the data transfer from the Minnesota Court system to NCIS (data from Sept 2010 is already included in the data base).

ALL jurisdictions in the United States should have these provisions (loss of firearm possession eligibility and required data reporting) if not already in place if we are to stem the flow of firearms to those who have been judicially determined to be mentally ill or incompetent.

Another important step in this process is to have the court order that any firearms currently in the possession of the individual who has been found ineligible to possess a firearm be surrendered to the authorities or family members unless and until his/her ownership rights have been restored.

The comments above deal strictly when the individual who suffers from mental illness intersects with the criminal or civil court system. Obviously, a treatise could be written on how we as a society should better treat those with a Mental Illness diagnosis. We need to provide families and the individuals themselves access to the critical care that is needed when an individual suffers.

Treating Mental Illness should be no different than treating any other illness/ailment. With the appropriate access to care, an individual can and should succeed. As was discussed by others on the panel in February, we need to focus on solutions that address the *continuum of care*. The continuum of care will address access to crisis services, treatment healthcare, housing, employment, and community support systems. Seeing the entire system as a *continuum of care* is critical to meet the needs of both the individual who suffers as well as the entire community.

Currently, there is a distrust on many levels by those who suffer from Mental Illness and the families who endure the frustration of attempting to help their loved ones. The distrust is too often not misplaced. They see the current system as one that doesn't treat but discharges not only the individual but also the responsibility. On the other hand there are those who see their loved ones sinking further into an abyss of commitment only because the cries for help were never heard – instead the individual who suffered was treated as a pariah.

We need to remember (just as in the criminal court system that most everyone will eventually be released back into our communities) that those who suffer from Mental Illness ARE living in our communities and are a part of our society. If currently in an in-patient treatment facility the individual will in all likelihood be released at some point. What then? How will we see to it that we are addressing the illness and keep the individual safe and address public safety concerns? The goal is to keep the individual from ever entering into the criminal court/mental health court system. By focusing on the continuum of care, we, as a society, have a better chance of meeting our public safety concerns by meeting our societal responsibility to those who suffer.