

116TH CONGRESS  
1ST SESSION

# S. 1331

To provide additional protections for our veterans.

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IN THE SENATE OF THE UNITED STATES

MAY 6, 2019

Mr. GRASSLEY (for himself, Mr. MANCHIN, Ms. MURKOWSKI, Mr. CRAPO, Mr. RISCH, Mr. CRAMER, and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To provide additional protections for our veterans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Second  
5 Amendment Rights Restoration Act of 2019”.

6 **SEC. 2. ADDITIONAL PROTECTIONS FOR OUR VETERANS.**

7 (a) IN GENERAL.—Chapter 55 of title 38, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing new section:

1 **“§ 5511. Conditions for treatment of certain persons**  
2 **as adjudicated mentally incompetent for**  
3 **certain purposes**

4 “(a) IN GENERAL.—(1) Beginning on the date of en-  
5 actment of this section, in any case arising out of the ad-  
6 ministration by the Secretary of laws and benefits under  
7 this title, the Secretary shall not determine a person to  
8 be adjudicated as a mental defective under subsection  
9 (d)(4) or (g)(4) of section 922 of title 18 unless the Fed-  
10 eral Government has met the burden of proving, by clear  
11 and convincing evidence, that the person is a danger to  
12 self or others.

13 “(2) The process to determine whether such person  
14 is a danger to self or others, as set forth in this section,  
15 shall proceed only after the Department has determined  
16 that a person requires the assignment of a fiduciary due  
17 to a finding of mental incompetency.

18 “(3) A person who is subject to the process set forth  
19 in this section that may result in a finding that he or she  
20 is a danger to self or others shall be provided formal notice  
21 and a process by which to challenge the Federal Govern-  
22 ment’s position, and shall be provided written notice of  
23 the effect of the ruling with respect to their ability to own  
24 and possess firearms and the protections granted under  
25 this section.

1       “(b) DETERMINATION OF DANGEROUSNESS.—(1)  
2 The process by which a person may be determined to be  
3 a danger to self or others shall be initiated, with the excep-  
4 tion of those persons described in subsection (i)(1), only  
5 after the Department has determined that a person re-  
6 quires the assignment of a fiduciary due to a finding of  
7 mental incompetency and if the Department has a reason-  
8 able basis based on articulable facts that a person may  
9 be a danger to self or others. After such reasonable basis  
10 is found, the Department may then proceed to formally  
11 determine, based on clear and convincing evidence, wheth-  
12 er such person is a danger to self or others for purposes  
13 of reporting to the National Instant Criminal Background  
14 Check System.

15       “(2) FACTORS TO CONSIDER IN THE COURSE OF DE-  
16 TERMINING A REASONABLE BASIS.—In analyzing whether  
17 a reasonable basis exists that a person is a danger to self  
18 or others, the Department may consider all records re-  
19 viewed in the course of assigning a fiduciary. Once that  
20 reasonable basis is found to exist, the Department may  
21 then proceed to formally determine, based on clear and  
22 convincing evidence, whether a person is a danger to self  
23 or others for purposes of reporting to the National Instant  
24 Criminal Background Check System.

1       “(3) FACTORS TO CONSIDER IN THE COURSE OF DE-  
2 TERMINING WHETHER A PERSON IS A DANGER TO SELF  
3 OR OTHERS.—

4           “(A) In analyzing whether a person is a danger  
5 to self or others, the Department may consider all  
6 records reviewed in the course of assigning a fidu-  
7 ciary and a person’s existing medical records.

8           “(B) In analyzing whether a person is a danger  
9 to self or others, the Department may consider a  
10 current statement from the beneficiary’s primary  
11 health physician assessing the beneficiary’s current  
12 and past (5 year period preceding the initiation of  
13 this process) mental health status, specifically  
14 whether the beneficiary has ever been a danger to  
15 self or others. A statement shall be considered cur-  
16 rent if it is based upon an assessment conducted  
17 during the 90-day period immediately preceding the  
18 initiation of the Medical Review.

19           “(C) In analyzing whether a person is a danger  
20 to self or others, the Department may consider the  
21 beneficiary’s reputation, as provided in statements  
22 and other evidence relating to the beneficiary. These  
23 statements must identify the person supplying the  
24 information; provide the person’s complete contact  
25 information, to include a current address and tele-

1 phone number; and describe the person's relation-  
2 ship with the beneficiary and frequency of contact.  
3 Specifically, the person providing such a statement  
4 shall indicate whether the beneficiary has a reputa-  
5 tion for violence and explain why the beneficiary is  
6 a danger to self or others.

7 “(D) In analyzing whether a person is a danger  
8 to self or others, the Department may consider other  
9 factors reasonably bearing on whether such person is  
10 a danger to self or others.

11 “(E) If after review of evidence acquired in  
12 paragraph (3) the Department finds based on clear  
13 and convincing evidence that a person is a danger to  
14 self or others, the Department shall proceed to sub-  
15 section (c) to initiate a formal process to notify such  
16 person.

17 “(4) If a conclusion by the Department that a person  
18 is a danger to self or others is not made in accordance  
19 with paragraph (1) through (3), the Federal Government  
20 shall not begin the process to find that such person is a  
21 danger to self or others.

22 “(c) PROCESS.—If a conclusion that a person is a  
23 danger to self or others is made under subsection (b), not  
24 later than 30 days after that date on which such conclu-  
25 sion is made, the Department shall provide notice to the

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

5 “(d) ADMINISTRATIVE REVIEW.—(1)(A) Except as  
6 provided in subsection (i), not later than 60 days after  
7 the date on which a person described in subsection (a) re-  
8 ceives notice of the pendency of the Federal Government  
9 action to determine whether or not such person is a danger  
10 to self or others, such person may request a review by  
11 the board designed or established under paragraphs (2)  
12 and (3) or a court of competent jurisdiction to determine  
13 whether such person is a danger to self or others.

14 “(B) If such person does not specify a forum, the  
15 Federal Government shall choose the forum.

16 “(C) In such assessment, the board may consider the  
17 person’s honorable discharge or decoration and other miti-  
18 gating factors reasonably bearing on whether such person  
19 is a danger to self or others.

20 “(2) Not later than 120 days after the date of enact-  
21 ment of this section, the Secretary shall designate or es-  
22 tablish a board that shall, upon request of a person under  
23 subsection (a), make a determination after both parties  
24 have presented their case as to whether a person is a dan-  
25 ger to self or others.

1       “(3) The board shall consist of three individuals, who  
2 shall either be retired Federal or State judges in good  
3 standing or administrative law judges appointed under  
4 section 3105 of title 5 in good standing, for a term of  
5 two years each and a majority decision shall control.

6       “(4) A determination by the board designated or es-  
7 tablished under paragraph (2) or by a court of competent  
8 jurisdiction that a person does not meet the standard  
9 under subsection (f) shall preclude the Secretary from re-  
10 porting such person to the National Instant Criminal  
11 Background Check System for the purpose of prohibiting  
12 the acquisition, receipt, transfer, shipment, transpor-  
13 tation, or possession of firearms or ammunition.

14       “(5)(A) Not later than 90 days after the date on  
15 which the person or Federal Government chooses the ad-  
16 ministrative review process, the board shall make a deter-  
17 mination.

18       “(B) If the board does not make a determination  
19 within the required 90-day period, the Secretary shall not  
20 report the person to the National Instant Criminal Back-  
21 ground Check System for the purpose of prohibiting the  
22 acquisition, receipt, transfer, shipment, transportation, or  
23 possession of firearms or ammunition.

24       “(e) JUDICIAL REVIEW.—(1) Not later than 45 days  
25 after the date on which an assessment of a person under

1 subsection (d) is made, such person or the Federal Gov-  
2 ernment may file a petition for judicial review of the  
3 board's determination with a court of competent jurisdic-  
4 tion.

5       “(2) A court shall review a case under paragraph (1)  
6 de novo.

7       “(f) BURDEN OF PROOF.—The burden of proof for  
8 all actions arising under this section shall be on the Fed-  
9 eral Government to prove, based on clear and convincing  
10 evidence, that a person is a danger to self or others and  
11 such burden shall be met before the person may be adju-  
12 dicated as a mental defective under subsection (d)(4) or  
13 (g)(4) of section 922 of title 18.

14       “(g) EMERGENCY ORDER.—(1)(A) In the case of a  
15 person who the Secretary believes may be an imminent  
16 danger to self or others, the Secretary may file an emer-  
17 gency petition in a court of competent jurisdiction to seek  
18 a temporary order prohibiting the acquisition, receipt,  
19 transfer, shipment, transportation, or possession of fire-  
20 arms or ammunition, if the Secretary has already trans-  
21 mitted the notification letter described in subsection (c).

22       “(B) The court in which an action is filed under sub-  
23 paragraph (A) may, if the court finds probable cause ex-  
24 ists that a person is an imminent danger to self or others,  
25 grant such petition.

1       “(C) The Secretary shall submit to the court the in-  
2 formation and documents, in unredacted form, that sup-  
3 port the Secretary’s position.

4       “(2) Except as provided in paragraph (3), an emer-  
5 gency order issued under this subsection shall expire on  
6 the earlier of—

7           “(A) the date that is 90 days after the date on  
8 which the order is issued; or

9           “(B) the date on which a determination is made  
10 by the board established under subsection (d)(2) or  
11 a court of competent jurisdiction as to whether the  
12 person is a danger to self or others.

13       “(3) The court may, in its discretion, extend an order  
14 issued under this subsection for not more than 30 days.

15       “(h) REGULATORY CHANGES.—Consistent with the  
16 requirements imposed under this section, the Secretary  
17 shall review all relevant regulations and revise such regula-  
18 tions as necessary.

19       “(i) PERSONS WITH EXISTING RECORDS.—(1) For  
20 persons with existing records in the National Instant  
21 Criminal Background Check System database supplied by  
22 the Secretary as of the date of enactment of this section,  
23 not later than 90 days after such date of enactment, the  
24 Secretary shall provide written notice of the opportunity

1 for administrative review or judicial review consistent with  
2 this section.

3 “(2) Each person described in paragraph (1) may,  
4 at any time, request administrative review under sub-  
5 section (d) or judicial review by a court of competent juris-  
6 diction to challenge the placement of the person in the  
7 National Instant Criminal Background Check System  
8 database consistent with the procedures and standards set  
9 forth in this section.

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

17 “(j) NEW AND MATERIAL EVIDENCE.—A person or  
18 the Federal government may reopen a finally adjudicated  
19 case by submitting new and material evidence consistent  
20 with this section.

21 “(k) DEFINITIONS.—In this section—

22 “(1) the term ‘court of competent jurisdiction’  
23 means the district court of the United States for the  
24 district in which the person who is subject to the as-  
25 sessment or determination resides; and

