To provide adequate protections for gun owners.

IN THE SENATE OF THE UNITED STATES

Mr. Paul introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To provide adequate protections for gun owners.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Gun Rights and Due Process Act”.

SEC. 2. DEFINITIONS RELATING TO MENTAL HEALTH.

(a) Title 18 Definitions.—Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a), by adding at the end the following:

“(36)(A) Subject to subparagraph (B), the term ‘has been adjudicated mentally incompetent or
has been committed to a psychiatric hospital’, with
respect to a person—

“(i) means the person is the subject of an
order or finding by a judicial officer or court—

“(I) that was issued after a hearing—

“(aa) of which the person re-
ceived actual notice; and

“(bb) at which the person had an
opportunity to participate with coun-
sel; and

“(II) that found that the person, as a
result of marked subnormal intelligence,
mental impairment, mental illness, incom-
petency, condition, or disease—

“(aa) was guilty but mentally ill
in a criminal case, in a jurisdiction
that provides for such a verdict;

“(bb) was not guilty in a criminal
case by reason of insanity or mental
disease or defect;

“(cc) was incompetent to stand
trial in a criminal case; or

“(dd) was not guilty by reason of
lack of mental responsibility under
section 850a of title 10 (article 50a of
the Uniform Code of Military Justice); and

“(ii) does not include—

“(I) an admission to a psychiatric hospital for observation; or

“(II) a voluntary admission to a psychiatric hospital.

“(B) In this paragraph, the term ‘order or finding’ does not include—

“(i) an order or finding that has expired or has been set aside or expunged;

“(ii) an order or finding that is no longer applicable because a judicial officer or court has found that the person who is the subject of the order or finding—

“(I) does not present a danger to himself or herself or to others;

“(II) has been restored to sanity or cured of mental disease or defect;

“(III) has been restored to competency; or

“(IV) no longer requires involuntary inpatient or outpatient treatment by a psychiatric hospital; or
“(iii) an order or finding with respect to which the person who is subject to the order or finding has been granted relief from disabilities under section 925(c), under a program described in section 101(e)(2)(A) or 105 of the NICS Improvement Amendments Act of 2007 (18 U.S.C. 922 note), or under any other State-authorized relief from disabilities program of the State in which the original commitment or adjudication occurred.

“(37) The term ‘psychiatric hospital’ includes a mental health facility, a mental hospital, a sanitarium, or a psychiatric facility, including a psychiatric ward in a general hospital.’; and

(2) in section 922—

(A) in subsection (d)(4)—

(i) by striking “as a mental defective” and inserting “mentally incompetent”; and

(ii) by striking “any mental institution” and inserting “a psychiatric hospital”; and

(B) in subsection (g)(4)—

(i) by striking “as a mental defective or who has” and inserting “mentally incompetent or has”; and
(ii) by striking “mental institution” and inserting “psychiatric hospital”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

The NICS Improvement Amendments Act of 2007 (18 U.S.C. 922 note) is amended—

(1) by striking “as a mental defective” each place that term appears and inserting “mentally incompetent”;

(2) by striking “mental institution” each place that term appears and inserting “psychiatric hospital”;

(3) in section 101(c)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking “to the mental health of a person” and inserting “to whether a person is mentally incompetent”; and

(B) in paragraph (2)—

(i) in subparagraph (A)(i), by striking “to the mental health of a person” and inserting “to whether a person is mentally incompetent”; and

(ii) in subparagraph (B), by striking “to the mental health of a person” and inserting “to whether a person is mentally incompetent”; and
(4) in section 102(c)(3)—

(A) in the paragraph heading, by striking “AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION” and inserting “AS MENTALLY INCOMPETENT OR COMMITTED TO A MENTAL INSTITUTION”; and

(B) by striking “mental institutions” and inserting “psychiatric hospitals”.

SEC. 3. PROTECTING THE SECOND AMENDMENT RIGHTS OF VETERANS.

(a) Definition.—In this section, the term “covered veteran” means a person who, on the day before the date of enactment of this Act, is considered to have been adjudicated as a mental defective or committed to a mental institution under subsection (d)(4) or (g)(4) of section 922 of title 18, United States Code, as a result of having been found by the Department of Veterans Affairs to be mentally incompetent.

(b) Review.—The Secretary of Veterans Affairs shall—

(1) not later than 90 days after the date of enactment of this Act, conduct a review relating to each covered veteran to determine whether the proceedings for the adjudication or commitment of the covered veteran were conducted in accordance with,
and resulted in an order or finding described in, section 921(a)(36) of title 18, United States Code, as added by this Act; and

(2) unless the Secretary certifies that the proceedings were conducted in accordance with, and resulted in an order or finding described in, section 921(a)(36) of title 18, United States Code, as added by this Act, ensure that the records of the covered veteran used for purposes of any determination of whether the covered veteran is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, are modified to indicate that the covered veteran has not been adjudicated mentally incompetent or committed to a psychiatric hospital.

(e) Enforcement.—

(1) Identification of inaccurate records.—Not later than January 1 of each year, the Attorney General shall—

(A) review the record of each person who is considered to have been adjudicated mentally incompetent or committed to a psychiatric hospital under subsection (d)(4) or (g)(4) of section 922 of title 18, United States Code, as a
result of having been found by the Department of Veterans Affairs to be mentally incompetent;

(B) identify each such record that does not include documentation indicating that the proceedings for the adjudication or commitment were conducted in accordance with, and resulted in an order or finding described in, section 921(a)(36) of title 18, United States Code, as added by this Act; and

(C) submit to the Secretary of the Treasury and Congress a report providing the number of records identified under subparagraph (B).

(2) RESCISSION.—Effective on the date on which the Attorney General submits a report under paragraph (1)(C), there is rescinded from the unobligated balances in the appropriations account appropriated under the heading “GENERAL ADMINISTRATION” under the heading “DEPARTMENTAL ADMINISTRATION” under the heading “DEPARTMENT OF VETERANS AFFAIRS” the amount equal to the product of—

(A) the number of records that the report states were identified by the Attorney General under paragraph (1)(B); and
(B) $10,000.

(d) APPOINTMENT OF FIDUCIARIES.—

(1) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by adding at the end the following:

§ 5511. Use of determinations to appoint fiduciaries

No determination by the Secretary that benefits under this title to which an individual is entitled shall be paid to a fiduciary shall be considered to be a determination that the individual has been adjudicated mentally incompetent for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 38, United States Code, is amended by adding at the end the following:

“5511. Use of determinations to appoint fiduciaries.”.

SEC. 4. USE OF DETERMINATIONS MADE BY THE COMMISSIONER OF SOCIAL SECURITY.

(a) TITLE II.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended by adding at the end the following:

“(11) No determination by the Commissioner of Social Security with respect to an individual, including a determination that benefits under this title to which such individual is entitled shall be paid to a representative payee, shall be considered to be a determination that the
individual has been adjudicated mentally incompetent for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.”.

(b) Title XVI.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended by adding at the end the following:

“(J) No determination by the Commissioner of Social Security with respect to an individual, including a determination that benefits under this title to which such individual is entitled shall be paid to a representative payee, shall be considered to be a determination that the individual has been adjudicated mentally incompetent for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.”.

(c) Enforcement.—

(1) Identification of Inaccurate Records.—Not later than January 1 of each year, the Attorney General shall—

(A) review the record of each person who is considered to have been adjudicated mentally incompetent or committed to a psychiatric hospital under subsection (d)(4) or (g)(4) of section 922 of title 18, United States Code, as a result of a determination by the Commissioner of Social Security;
(B) identify each such record that does not include documentation indicating that the proceedings for the adjudication or commitment were conducted in accordance with, and resulted in an order or finding described in, section 921(a)(36) of title 18, United States Code, as added by this Act; and

(C) submit to the Secretary of the Treasury and Congress a report providing the number of records identified under subparagraph (B).

(2) Rescission.—

(A) In general.—Effective on the date on which the Attorney General submits a report under paragraph (1)(C), there is rescinded from the unobligated balances in the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, on a pro rata basis, the amount equal to the product of—

(i) the number of records that the report states were identified by the Attorney General under paragraph (1)(B); and
(ii) $10,000.

(B) Treatment of amounts.—Amounts rescinded under subparagraph (A) shall be deemed to have been expended for costs described in section 201(g)(1) of the Social Security Act (42 U.S.C. 401(g)(1)).

SEC. 5. STATE HEALTH REPORTS.

Section 102(c)(3) of the NICS Improvement Amendments Act of 2007 (18 U.S.C. 922 note) is amended by adding at the end the following: “A report made available by a State indicating that a person has been adjudicated as mentally incompetent or committed to a mental institution shall not be used for purposes of any determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, unless the Attorney General determines that the proceedings for the adjudication or commitment were conducted in accordance with, and resulted in an order or finding described in, section 921(a)(36) of title 18, United States Code and that the State has provided clear and convincing evidence that the person poses a significant danger.”.

SEC. 6. APPLICABILITY OF AMENDMENTS.

With respect to any record of a person prohibited from possessing or receiving a firearm under subsection...
(d)(4) or (g)(4) of section 922 of title 18, United States Code, before the date of enactment of this Act, the Attorney General shall remove such a record from the National Instant Criminal Background Check System—

(1) upon being made aware that the person is no longer considered as adjudicated mentally incompetent or committed to a psychiatric hospital according to the criteria under paragraph (36)(A)(i)(II) of section 921(a) of title 18, United States Code (as added by this Act), and is therefore no longer prohibited from possessing or receiving a firearm;

(2) upon being made aware that any order or finding that the record is based on is an order or finding described in paragraph (36)(B) of section 921(a) of title 18, United States Code (as added by this Act); or

(3) upon being made aware that the person has been found competent to possess a firearm after an administrative or judicial review under subsection (c) or (d) of section 5511 of title 38, United States Code (as added by this Act).