

NAAG Task Force on School Safety
Attorney General John Suthers (CO), Co-Chair
Attorney General Patrick Lynch (RI), Co-Chair

Professor Peter Swire Biography

Peter P. Swire is the C. William O'Neill Professor of Law at the Moritz College of Law of the Ohio State University and director of that school's Washington, D.C. summer program. He is also a Senior Fello at the Center for American Progress.

From 1999 to early 2001 he served as the Clinton Administration's Chief Counselor for Privacy, in the U.S. Office of Management and Budget. In that position, he coordinated Administration policy on the use of personal information in the public and private sectors, and served as point of contact with privacy and data protection officials in other countries. He was White House coordinator for the proposed and final HIPAA medical privacy rules.

Swire is faculty editor of the "Privacy Year in Review" for I/S: A Journal of Law and Policy for the Information Society. With Lawrence Lessig, he is Editor of the Cyberspace Law Abstracts of the Social Science Research Network. Many of his writings appear at www.peterswire.net.

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Steven McDonald
Biography,
Power Point Presentation
&
Other Materials

Steven J. McDonald is General Counsel at Rhode Island School of Design and previously served as Associate Legal Counsel at The Ohio State University. He has handled a number of Internet-related legal matters, ranging from alleged infringements of copyrighted materials on student web pages to investigations of computer break-ins to an e-mail death threat to Socks the cat. He began his legal career in private practice at Jones, Day, Reavis & Pogue, where he represented CompuServe in *Cubby v. CompuServe*, the first online libel case, and he also has taught courses in Internet law at Ohio State's College of Law and at Capital University Law School. He is a Fellow and past member of the Board of Directors of the National Association of College and University Attorneys and is the editor of NACUA's *The Family Educational Rights and Privacy Act: A Legal Compendium*. In *State, ex rel. Thomas v. The Ohio State University*, the Ohio Supreme Court ruled that he really is a lawyer. He received his A.B. from Duke University and his J.D. from The Yale Law School.

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***Disclosure of Information from Education Records to Parents of Students Attending
Postsecondary Institutions***

Recently many questions have arisen concerning the Family Educational Rights and Privacy Act (FERPA), the federal law that protects the privacy of students' education records. The Department wishes to clarify what FERPA says about postsecondary institutions sharing information with parents.

What are parents' and students' rights under FERPA?

At the K-12 school level, FERPA provides parents with the right to inspect and review their children's education records, the right to seek to amend information in the records they believe to be inaccurate, misleading, or an invasion of privacy, and the right to consent to the disclosure of personally identifiable information from their children's education records. When a student turns 18 years old or enters a postsecondary institution at any age, these rights under FERPA transfer from the student's parents to the student. Under FERPA, a student to whom the rights have transferred is known as an "eligible student." Although the law does say that the parents' rights afforded by FERPA transfer to the "eligible student," FERPA clearly provides ways in which an institution can share education records on the student with his or her parents.

While concerns have been expressed about the limitations on the release of information, there are exceptions to FERPA's general rule that educational agencies and institutions subject to FERPA may not have a policy or practice of disclosing "education records" without the written consent of the parent (at the K-12 level) or the "eligible student."

When may a school disclose information to parents of dependent students?

Under FERPA, schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules.

Can a school disclose information to parents in a health or safety emergency?

The Department interprets FERPA to permit schools to disclose information from education records to parents if a health or safety emergency involves their son or daughter.

Can parents be informed about students' violation of alcohol and controlled substance rules?

Another provision in FERPA permits a college or university to let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

Can a school disclose law enforcement unit records to parents and the public?

Additionally, under FERPA, schools may disclose information from “law enforcement unit records” to anyone – including parents or federal, State, or local law enforcement authorities – without the consent of the eligible student. Many colleges and universities have their own campus security units. Records created and maintained by these units for law enforcement purposes are exempt from the privacy restrictions of FERPA and can be shared with anyone.

Can school officials share their observations of students with parents?

Nothing in FERPA prohibits a school official from sharing with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record. Therefore, FERPA would not prohibit a teacher or other school official from letting a parent know of their concern about their son or daughter that is based on their personal knowledge or observation.

How does HIPAA apply to students' education records?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a law passed by Congress intended to establish transaction, security, privacy, and other standards to address concerns about the electronic exchange of health information. However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above.

In all of our programs here at the Department of Education, we consistently encourage parents' involvement in their children's education. FERPA is no exception. While the privacy rights of all parents and adult students are very important, there are clear and straightforward ways under FERPA that institutions can disclose information to parents and keep them involved in the lives of their sons and daughters at school.

Federal Regulation of Higher Education: FERPA

Steven J. McDonald
Rhode Island School of Design

2007 NACUA Annual Conference

FERPA

- The Family Educational Rights and Privacy Act of 1974
- A.K.A. the Buckley Amendment

The FERPA Trinity

- College students have the right, *in general*, to:
 - Control the disclosure of their "education records" to others
 - Inspect and review their own "education records"
 - Seek amendment of their "education records"

So, What's an "Education Record"?

- "Education records' . . . means those records that are:
 - (1) Directly related to a student; and
 - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution"

So, What's an "Education Record"?

- "Education records' . . . means those records that are:
 - (1) Directly related to a student; and
 - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution"

So, What's an "Education Record"?

- "Educational . . . institution' means any public or private . . . institution" that receives funds "under any program administered by the Secretary [of Education]"

So, What's an "Education Record"?

- "'Record' means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche"
- N.B.: Does *not* include information that is not "recorded" – that is, personal knowledge

So, What's an "Education Record"?

- "'Student' . . . means any individual who is or has been in attendance at an educational . . . institution"
- "'Attendance' includes, but is not limited to . . . [a]ttendance in person or by correspondence"

So, What's an "Education Record"?

- A record is "directly related" to a student if it contains "personally identifiable information" about that student
- "'Personally identifiable information' includes, but is not limited to:" name, address, personal identifiers (such as SSNs or campus ID numbers), "a list of personal characteristics that would make the student's identity easily traceable", and "other information that would make the student's identity easily traceable"

So, What's an "Education Record"?

- "Maintain" is . . .

So, What's an "Education Record"?

- "Maintain" is *not defined!*
- Supreme Court:
 - "FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar."
 - "The ordinary meaning of the word 'maintain' is 'to keep in existence or continuance; preserve; retain.'"

We Don't Need No "Education"

- "Education records" certainly includes transcripts, exams, papers, and the like
- But it also includes:
 - SSNs, ID numbers, and driver license numbers
 - Discipline records, including complaints
 - Attendance and absence records
 - Health and immunization records
 - Disability accommodation records
 - Records that are publicly available elsewhere
 - Records of information that the student has publicly revealed
 - *Pretty much everything!*

Except for These:

- "Sole possession" records
 - As long as not shared or accessible
- "Law enforcement" records
 - But only the law enforcement office's copy
- "Employment" records
 - Unless student status is a job requirement
- "Treatment" records
 - Only if not shared
- "Alumni" records
 - But not if they "relate back"

Disclosure

- Before disclosing education records – or information from education records – an institution must obtain a signed and dated written consent from *all* relevant students, specifying:
 - The records that may be disclosed
 - The purpose for which they may be disclosed
 - The persons or classes to whom they may be disclosed

Except for Disclosures:

- To "school officials . . . whom the . . . institution has determined to have legitimate educational interests"
 - Must specify standards in annual notice
 - "School officials" can include students serving on committees and outside contractors
 - "Legitimate educational interests" can include what is needed to do one's job
 - Institution, not individual, makes the determination

Except for Disclosures:

- Of "directory information"
 - Can include name, address, e-mail address, telephone number, photograph, date and place of birth, major, dates of attendance, participation in officially recognized activities and sports, degrees, honors and awards received, and other "information that would not generally be considered harmful or an invasion of privacy if disclosed"
 - Must give advance notice of types and provide opportunity to opt out

Except for Disclosures:

- To "parents . . . of a dependent student" for federal tax purposes
 - Parents of college students have no general right to see their children's records, *even if the students are minors*
 - Need to obtain a copy of parents' most recent tax return to verify dependent status
 - Warning: Tell them about this before there's a problem

Except for Disclosures:

- To "comply with a judicial order or lawfully issued subpoena"
 - Must make a "reasonable effort to notify" the student beforehand
 - Unless it's a grand jury or law enforcement subpoena and you've been ordered not to disclose
 - No obligation – and probably no right – to fight the subpoena on the student's behalf

Except for Disclosures:

- In a lawsuit, by or against a student, in which you're an adversary
 - No need to notify student in advance
 - May disclose only "relevant" records

Except for Disclosures:

- In connection with a "health or safety emergency"
 - Must be:
 - Specific situation
 - Imminent danger to student or others and/or immediate need to disclose to avert or diffuse threat of serious harm
 - Narrowly tailored disclosure
 - Only to "appropriate parties" and limited to "information [that] is necessary to protect the health or safety of the student or other individuals"

Recent Guidance

- Serious communicable diseases that are epidemic in nature – yes
- Serious infectious diseases – case-by-case
- Suicidal ideation – case-by-case
 - "[A] student's suicidal statements, coupled with unsafe conduct and threats against another student, constitute a "health or safety emergency" under FERPA. However, . . . this exception does not support a general or blanket exception in every case in which a student utters a threat."

Except for Disclosures:

- To parents of a student under 21 *if* the institution has determined that the student violated its alcohol or drug rules
 - Student must be under 21 at time of disclosure, not just at time of violation

Except for Disclosures:

- And several more
- N.B.: As far as *FERPA* is concerned, all of these are discretionary
 - May be public records or other disclosure obligations
- Also N.B.: These exceptions are independent of each other, not cumulative

Implicit Disclosures

- "Just the directory information" for a specified student or subset of students
 - e.g., the names and addresses of all students who have made sexual harassment complaints
- "Anonymized" data and information
 - e.g., redacted disciplinary reports for all members of the football team this year
- "Broken locket" requests
 - e.g., degree verifications in response to student SSNs
- Seriatim or "triangulation" requests
 - e.g., incident reports, followed by (redacted) disciplinary records, followed by . . .

But Wait, There's More!

- *In general*, must make a record of each request and each disclosure and maintain it with the relevant education record
- *In general*, may disclose only on condition that the information not be redisclosed without student consent
- *In general*, recipients may use disclosed information only for specified purpose

Inspect and Review

- Must allow students to "inspect and review" their own education records within 45 days of request
- Need not provide copies unless "circumstances effectively prevent the . . . student from exercising the right to inspect and review"
- Does not include financial aid records of parents or confidential letters of recommendation to which the student has waived access
- If record relates to more than one student, must redact

Seek Amendment

- Student may request amendment of records containing "information that is inaccurate, misleading, or in violation of the student's rights of privacy"
 - *Not* a grade grievance mechanism
- If deny request, must give student an opportunity for a hearing
- If still deny request, student may include a statement with the record

Annual Notice

- *Must* include statement of students' rights to:
 - Inspect and review their own education records (and procedures for doing so)
 - Seek amendment of "inaccurate" or "misleading" records (and procedures for doing so)
 - Consent to most disclosures
 - File a complaint with DOE

Annual Notice

- *May* (and probably should) include:
 - Your definition of "directory information" and procedure and deadline to opt out
 - Your definition of "school officials" and "legitimate educational interest"
 - If applicable, a statement of your practice of forwarding records to schools to which students seek to transfer

The Oracle of FERPA

- Family Policy Compliance Office contact information:
 - 202-260-3887 (voice)
 - 202-260-9001 (fax)
 - FERPA@ed.gov

Questions?
(and maybe answers)

110TH CONGRESS
1ST SESSION

H. R. 2220

To permit educational agencies and institutions to disclose certain information to parents of students who may pose a significant risk to their own safety or well-being, or to the safety or well-being of others.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2007

Mr. TIM MURPHY of Pennsylvania (for himself, Mrs. NAPOLITANO, Mr. BOUCHER, Mr. REYES, Mr. BACA, Mr. RODRIGUEZ, Mr. BONNER, Mr. GARRETT of New Jersey, Mr. ROGERS of Alabama, Mr. HASTERT, Mr. DANIEL E. LUNGREN of California, Mr. KUHL of New York, Mr. GINGREY, Mr. MCCOTTER, Mrs. SCHMIDT, Mr. HAYES, Mr. CONAWAY, and Ms. FALLIN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To permit educational agencies and institutions to disclose certain information to parents of students who may pose a significant risk to their own safety or well-being, or to the safety or well-being of others.

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 “Mental Health Secu-
5 rity for America’s Families in Education Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Many young adults experience symptoms of
4 mental illness. A 2006 survey by the American Col-
5 lege Health Association reports that nearly 15 per-
6 cent of students in college are diagnosed with de-
7 pression. One in 4 adults experience symptoms of
8 mental illness in their lifetime, according to the Na-
9 tional Institute of Mental Health.

10 (2) The American College Health Association
11 reported in a 2005 survey of college students that
12 11 percent of women and 9 percent of men have
13 considered suicide. According to a study by the Sui-
14 cide Prevention Resource Center, suicide is the sec-
15 ond leading cause of death among college students.

16 (3) Many youth and young adults with mental
17 illness are exposed to bullying, harassment, mal-
18 treatment, and social alienation by other students
19 and adults, which can exacerbate their conditions.

20 (4) In 2005, a national survey of Counseling
21 Center Directors reported a 14 percent increase in
22 severe psychological problems (including self-injury)
23 among students during the period from 2000 to
24 2005.

25 (5) According to a 2003 report by the Bureau
26 of Justice Statistics, out of the 7,700,000 college

1 students in the United States, 526,000 students ex-
2 perience violent crimes (rape, robbery, aggravated
3 assault, and simple assault). A significant percent-
4 age of students involved in violent crime may also
5 have symptoms of a diagnosable mental illness.

6 (6) Years of research findings have concluded
7 that mental health services provided by properly
8 trained professionals can be effective in the treat-
9 ment of mental illness. Withholding referrals and
10 treatment, however, can be detrimental to the recov-
11 ery and prognosis of patients.

12 (7) Confidentiality is the cornerstone of the
13 doctor-patient relationship, but when there is a sig-
14 nificant risk to the health or safety of a student or
15 others (including suicide, homicide, or physical as-
16 sult), it may serve the best interest of the student
17 to inform persons who can provide the necessary
18 help to protect the student, fellow students, and oth-
19 ers.

20 (8) Common symptoms of mental illness include
21 impaired judgment, confusion, emotional disorders,
22 social withdrawal, and impulsivity, all of which limit
23 a person's ability to make rational decisions regard-
24 ing their own care and treatment.

1 (9) Parents and legal guardians of a student
2 may be in the best position to supply essential help
3 to a student suffering from significant mental ill-
4 ness, by providing emotional support, medical his-
5 tory, coordinating care with various mental health
6 and medical professionals, and long term follow-up.

7 (10) The Federal Government, in recognition of
8 the value of the parental role in the treatment of
9 children, requires that a parent must be involved in
10 every level of the evaluation and treatment decisions
11 regarding a special needs child in a school setting.
12 However, the value of parental involvement should
13 not end when a student has attained 18 years of
14 age.

15 (11) The Family Educational Rights and Pri-
16 vacy Act (FERPA) of 1974 was originally intended
17 to protect the confidentiality of student grades and
18 records. Exceptions in FERPA to the confidentiality
19 requirements permit the release of records “in con-
20 nection with an emergency, to appropriate persons if
21 the knowledge of such information is necessary to
22 protect the health or safety of the student or oth-
23 ers.” The unintended consequence of FERPA, how-
24 ever, is that school personnel, administrators, and
25 teachers who have little or no training in mental

1 health and mental illness are burdened with defining
2 and determining if a student is at risk. These edu-
3 cational personnel are reluctant to release informa-
4 tion to parents for fear of legal action. These issues
5 create barriers and delays for informing families
6 even when schools are concerned that students may
7 be a risk to themselves or others.

8 (12) It is important, compassionate, and essen-
9 tial that laws should facilitate, not inhibit, parent-
10 child communication that aids proper treatment for
11 mental illness when deemed appropriate.

12 **SEC. 3. MENTAL HEALTH DISCLOSURES FOR STUDENT**
13 **SAFETY.**

14 The Family Educational Rights and Privacy Act of
15 1974 (20 U.S.C. 1232g) is amended by adding at the end
16 the following new subsection:

17 “(k) MENTAL HEALTH DISCLOSURES FOR STUDENT
18 SAFETY.—

19 “(1) IN GENERAL.—Notwithstanding any other
20 provision of this section or the Higher Education
21 Act of 1965 (20 U.S.C. 1001 et seq.), and subject
22 to paragraph (2), an educational agency or institu-
23 tion of higher education may disclose, to a parent or
24 legal guardian of a student who is a dependent (as
25 defined in section 152 of the Internal Revenue Code

1 of 1986), information related to any conduct of, or
2 expression by, such student that demonstrates that
3 the student poses a significant risk of harm to him-
4 self or herself, or to others, including a significant
5 risk of suicide, homicide, or assault.

6 “(2) CERTIFICATION BY A LICENSED MENTAL
7 HEALTH PROFESSIONAL.—An educational agency or
8 institution shall not disclose any information under
9 this subsection that is not otherwise authorized to be
10 disclosed under this section unless the educational
11 agency or institution—

12 “(A) with respect to the conduct of, or ex-
13 pression by, a student described in paragraph
14 (1), consults with a mental health professional
15 who—

16 “(i) is approved by the State in which
17 the educational agency or institution is lo-
18 cated and who is licensed by the appro-
19 priate entity to provide mental health serv-
20 ices and treatment; and

21 “(ii) is acting in accordance with the
22 ethical and professional standards gov-
23 erning such professional; and

1 “(B) obtains a written certification from
2 such professional that the professional has rea-
3 son to believe—

4 “(i) that such conduct of, or expres-
5 sion by, the student demonstrates that the
6 student poses a significant risk of harm to
7 himself or herself, or to others, including a
8 significant risk of suicide, homicide, or as-
9 sault; and

10 “(ii) the possession of the knowledge
11 of such information by the parent or legal
12 guardian of the student may protect the
13 health or safety of the student or other
14 persons.

15 “(3) DEPENDENT STUDENTS.—Notwith-
16 standing subsection (d), an educational agency or in-
17 stitution of higher education may disclose informa-
18 tion to a parent or legal guardian of a student who
19 is a dependent (as defined in section 152 of the In-
20 ternal Revenue Code of 1986) for the purposes of
21 and in accordance with the requirements of this sub-
22 section, regardless of whether the student has at-
23 tained eighteen years of age, or is attending an insti-
24 tution of postsecondary education.

1 “(4) PROTECTION OF EDUCATIONAL AGENCY
2 OR INSTITUTION.—An educational agency or institu-
3 tion that, in good faith, discloses education records
4 or other information (including records described in
5 clauses (ii) or (iv) of subsection (a)(4)(B)) in accord-
6 ance with the requirements of this subsection shall
7 not be liable to any person for that disclosure.

8 “(5) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed to prohibit an edu-
10 cational agency or institution from taking such other
11 action as the agency or institution determines to be
12 necessary to protect the safety of students.”.

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NAAG Task Force on School Safety
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Bob Dobek
Biography
&
Material

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PROFESSIONAL EXPERIENCE

LEGISLATIVE DIRECTOR

U.S. REPRESENTATIVE CAROLYN McCARTHY (D-NY) 2005-present

- Handled non-housing financial issues for Financial Services Committee, judiciary, tax and budget, environment and energy, and other issues
- Responsible for gun safety legislation including NICS background check and assault weapons bills
- Monitored Floor action and coordinated activities of four person legislative staff

SENIOR POLICY ADVISOR

U.S. SENATOR BOB GRAHAM (D-FL) 2004

- Handled environment, energy, and agriculture

LEGISLATIVE DIRECTOR and TAX COUNSEL

U.S. REPRESENTATIVE KAREN THURMAN (D-FL) 1993-2003

- Handled tax matters for Ways and Means Committee, agriculture, judiciary, national security, environment, special projects, and appropriations requests
- Reorganized legislative operation of new Member of Congress and instructed staff new to Capitol Hill in legislative methods and techniques
- Coordinated and managed Member's committee, constituent service, and legislative agendas while supervising work of five legislative aides
- Managed many daily office activities, freeing Chief of Staff for other important duties
- Addressed policy problems from issue analysis through legislative review to final action
- Edited statements and correspondence for content, style, and grammar.
- Assisted press secretary in drafting speeches and articles
- Analyzed and learned new issues quickly and provided policy advice to Member before votes in House on all matters.
- Established good office communication by maintaining legislative staff training manual and by compiling weekly log of Member's public activities
- Selected as John C. Stennis Congressional Staff Fellow, 107th Congress, a competitive leadership program that recognizes senior-level congressional staff for public service and permits Fellows to propose ways for Congress to address future problems

LEGISLATIVE DIRECTOR

U.S. REPRESENTATIVE LARRY SMITH (D-FL) 1983-1993

- Analyzed and monitored legislation relating to Judiciary Committee issues (antitrust, crime, and immigration), defense, tax, telecommunications, and narcotics control.
- Monitored activities in House and advised Member on legislation and amendments on House Floor.
- Researched and wrote testimony, statements, and newspaper columns.

- Organized new Member's legislative program and taught legislative procedures to new legislative staff.
- Defined constituent mail response system and supervised its implementation

SENIOR LEGISLATIVE ASSISTANT

U.S. REPRESENTATIVE BOB SHAMANSKY (D-OH)

1982-83

- Analyzed and reviewed foreign affairs legislation and policy, defense, judiciary, tax, and agriculture.

WASHINGTON REPRESENTATIVE

SIKORSKY AIRCRAFT, WASHINGTON, DC

1981-82

- Established and maintained liaison between major defense contractor and Congress.
- Prepared analyses and provided policy advice to corporate representatives.
- Discussed with congressional committees legislation affecting contractor.

APPROPRIATIONS ASSOCIATE STAFF

U.S. REPRESENTATIVE ROBERT N. GIAIMO (D-CT)

1975-1981

- Monitored hearings and tracked funding for Defense and other programs under the jurisdiction of the House Appropriations Committee.
- Advised Member on legislation before other committees and the House.
- Wrote press statements and periodic newspaper columns.

LEGISLATIVE ASSISTANT

U.S. REPRESENTATIVE ELLA GRASSO

1971-1975

- Learned essentials of legislative procedures while monitoring and analyzing education, labor, veterans' affairs, and other issues.

EDUCATION

JD, Georgetown University Law Center, Washington, DC

1979

Electives included Legislative Drafting, Separation of Powers seminar, and Law of International Agreements.

Fletcher School of Law & Diplomacy, Tufts University, Medford, MA

1970-71

International Relations graduate work in US diplomacy, the UN, and Middle East

BA, History, Yale University, New Haven, CT

1970

Andrew D. White History Prize (1968). Emphasis on Eastern Europe, Russia, and diplomatic history.

PROFESSIONAL AFFILIATIONS

Member of the Connecticut Bar and District of Columbia Bar Associations.

HR 2640, NICS Improvement Amendments Act of 2007

(Previously McCarthy-Dingell HR 297)

After discussions with Rep. John Dingell—a cosponsor and supporter of NICS Improvement since 2002—Rep. Carolyn McCarthy agreed that several changes to HR 297 would improve the bill’s prospects. That is why HR 2640 was introduced on June 11, 2007.

Enforce 1968 Gun Control Act

Under the 1968 Gun Control Act, an individual is prohibited from possessing a firearm if he:

- (a) is under indictment or has been convicted of a crime punishable by more than one year;
- (b) is a fugitive from justice;
- (c) is an unlawful user or an addict of any controlled substance;
- (d) has been adjudicated as a mental defective or has been committed to any mental institution;
- (e) is subject to a court order restraining them from domestic violence;
- (f) has been convicted of a domestic violence misdemeanor;
- (g) has been dishonorably discharged from the military;
- (h) is an illegal alien; or
- (i) renounced U.S. citizenship.

The NICS Improvement Amendments Act enforces existing law by requiring states to automate and share disqualifying records with the FBI’s NICS database.

Transmittal of Federal Records to NICS

All federal agencies shall transmit all relevant records relating to persons disqualified from acquiring a firearm under federal law to the Attorney General for inclusion in NICS.

For example, the Department of Homeland Security shall transmit all relevant records of persons disqualified from acquiring a firearm under federal law, including illegal aliens, visitors to the United States on student visas, and visitors on tourist visas. NICS records from the VA and other federal agencies must reflect accurately the person’s status. For example, only veterans who were properly adjudicated as mentally ill or properly committed to a mental institution would remain in NICS, since only these people are barred from getting guns under current law.

Transmittal of State Records to the NICS

Each State shall provide information on disqualified persons to the U.S. Attorney General for inclusion in NICS.

- **Access to information** - Any information provided to the Attorney General under this section may only be accessed by personnel legally entitled to access NICS for the purposes of conducting a background check for a firearm purchase.
- **Privacy protections** - The Attorney General shall work with federal, state, local law enforcement and the mental health community to establish protocols for protecting the privacy of information sharing.

Grants to States

The Attorney General shall award a grant to each state to offset the initial costs directly associated with complying with this section.

- **Authorization** - \$250,000,000 for each of fiscal years 2008, 2009, and 2010.

- **Requirements for Grants** – Before becoming eligible for funds, a state must provide to the Attorney General an initial estimate of records on disqualified persons. The state also must establish a process to review petitions, submitted by people now disqualified because of mental illness, seeking reinstatement of gun rights.
- **Incentive for State Participation (“Carrot”)** – The bill waives the 10 percent state matching requirement for National Criminal History Improvement Program (NCHIP) grants for a state that automates and shares at least 90 percent of all disqualifying records. The waiver period shall not exceed 5 years
- **Noncompliance (“Stick”)** - After three years, the FBI will report on the progress of states automating their databases and supplying that information to the federal NICS database. The Department of Justice will be authorized, but not required, to deny up to 3 percent of funds available under the Omnibus Crime Control and Safe Streets Act of 1968, to any state that fails to automate 60 percent of its disqualifying records and supplying that information to the federal NICS database.

After 5 years, if states have failed to automate at least 90 percent of its disqualifying records, and supply that information to the federal NICS database, the Department of Justice is required to deny 5 percent of funds available each year under the Omnibus Crime Control and Safe Streets Act of 1968 until the state has automated at least 90 percent of disqualifying records, and has supplied that information to NICS.

- **Waiver by Attorney General** - The Attorney General may grant a waiver to states that do not comply if they provide compelling evidence explaining their inability to automate at least 90 percent of all records covered by this bill.

Grants to State Courts for the Improvement in Automation and Transmittal of Disposition Records

Establishes a grant program for state courts to assess and improve handling of proceedings related to criminal history dispositions, and temporary restraining orders, as they relate to disqualification from firearms ownership under state and federal laws.

In the first fiscal year after the enactment of this Act, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of conducting *assessments* of state courts, and automating and transmitting court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

In subsequent fiscal years, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of *implementing systems and procedures* for the automation and transmittal of court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

- **Authorization** - \$125,000,000 for each of fiscal years 2008, 2009, and 2010.

If you have any questions, please contact Rep. Carolyn McCarthy or Bob Dobek at 202-225-5516.