FEDERAL GUN REPORTING REQUIREMENTS AND THEIR APPLICATION TO PEOPLE WITH MENTAL ILLNESS

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BEFORE THE DOMESTIC POLICY SUBCOMMITTEE OF THE HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

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Chairman Kucinich, Congressman Issa, and distinguished members of the Subcommittee, my name is Ron Honberg and I am the Director of Policy and Legal Affairs for the National Alliance on Mental Illness (NAMI). NAMI is a grassroots advocacy organization comprised of people with serious mental illness and their families, with more than 1,100 affiliates in all 50 states and the District of Columbia.

In the wake of the Virginia Tech tragedy, many questions have been raised about how something of this magnitude could have happened and how someone like Mr. Cho could have been allowed to purchase handguns. For NAMI, the story of someone falling through the cracks and not getting the mental health treatment they obviously needed is all too common. Of course, it is very rare that such individuals commit acts of violence towards others. More commonly, they suffer silently – desperately needing treatment and support but failing to get it from a system and a society that frequently turns a blind eye.

NAMI has been asked to address the National Instant Background System (NICS) but we believe the real lessons of the Virginia Tech tragedy lies in the failed mental health system. We call on Congress and the States to allocate sufficient resources and direct these resources to ensuring that people get the treatment they need when they need it.

Turning to the issue of gun control, the Virginia Tech tragedy revealed flaws in the NICS system. Under federal law, states are required to report certain categories of individuals for inclusion in the NICS system, but it appears that many states are not complying with these reporting requirements

Our focus at NAMI is specifically on severe mental illness. Thus, our comments today are focused on the impact – or potential impact – of federal gun reporting requirements on people with severe mental illness. NAMI strongly supports an effort to prevent violent or potentially violent individuals from owning guns. Our concern however is that mental illness should not be a proxy for violence.

To recount some of the history, when Congress passed its first gun disclosure law in 1968, people "adjudicated as mental defectives" and "people committed to a mental institution" were identified among those who should not be permitted to own or purchase guns.

No attempt to define these terms occurred until 1998, when the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, promulgated regulations to implement the Brady Act.

The term "adjudicated as a mental defective" is defined as follows: (27 CFR § 555.11)

"A determination by a court, board, commission or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:

> *(1) Is a danger to himself or to others; or*
> *(2) Lacks the mental capacity to contract or manage his own affairs.*

(b) The term will include –

(1) A finding of insanity by a court in a criminal case; and
(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility by any court or pursuant to articles 540a and 76b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

No definition of the term "committed to a mental institution" is in either the Brady Handgun Violence Prevention Act or the implementing regulations.

NAMI has four major concerns about the current definition in the Brady bill: the vague and outdated language in the definition, the lack of a clear connection between mental illness and violence, the lack of time limits, and privacy concerns. We recommend a regulatory process that involves the relevant federal agencies, including the National Institute of Mental Health (NIMH) and the Substance Abuse and Mental Health Services Administration (SAMHSA), to develop a clearer definition that reflects modern science.

1. The definitions used to implement the Brady law are vague and do not clearly define who should and should not be included:

First, as a threshold consideration, the term "adjudicated as a mental defective" is both stigmatizing and incompatible with modern terminology used in the diagnosis and treatment of people with mental illness. No state official charged with carrying out the requirements of the Brady bill could possibly know what this means, as it is a term that has been obsolete for close to 40 years. We have received emails and other communications in the last few weeks from people who are incredulous that such a term would still be used in federal law.

Second, as stated above, the Brady implementing regulations do not define the meaning of the term "committed to a mental institution." Thus, it may be presumed that anyone ever civilly committed to a hospital would be included. Yet, not all people under involuntary civil commitment orders have been determined to be dangerous to self or others. In fact, many state statutes contain criteria for civil commitment such as "gravely disabled", inability to provide for basic needs, inability to make rational decisions, and other factors. If past violence is a strong predictor for future violence, as the research strongly suggests, then criteria for excluding people from possessing guns should be linked to violence, not just to treatment for serious mental illness.

Third, the inclusion of people who "lack the capacity to contract or manage their own affairs" in the definition, without any durational limits for inclusion on the list, may be problematic as well. Mental illnesses are episodic by their nature. Symptoms fluctuate over time. With proper treatment, people whose capacity to manage their own affairs may be temporarily impaired can and do recover and go on to live independently and productively, sometimes for the remainder of their lives. Should a person who experiences a short-term impairment in capacity to manage money or personal affairs but recovers that capacity be included in the NICS database for the rest

of his or her life? What impact will knowledge of this have on a person's willingness to seek help when they need it? We are very concerned that an irreversible inclusion in the NICS database is not only inappropriate, but may reduce the willingness of people to seek help for their mental health condition.

Finally, the broad language in the regulations could be read to include decisions by administrative agencies. For example, the Social Security Administration sometimes temporarily assigns Representative Payees to beneficiaries of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) to help them manage their benefits. These individuals may require assistance in managing their benefits, but this does not correlate with violence or potential violence.

NAMI strongly believes that any legislative initiative to strengthen state compliance with reporting requirements for the NICS system should incorporate greater specificity and clarity in defining criteria for including certain people with mental illness in the database. As discussed in further detail below, certain states such as California have definitions that are far clearer and easier to implement. The federal government should similarly strive for greater clarity.

2. **The current definition, as it applies to mental illness does not clearly establish a connection between the categories included for reporting and a history of violence**.

The goal of the NICS reporting system is presumably to prevent guns from coming into the hands of individuals who are dangerous or potentially dangerous to self or others. The broad criteria for including people with mental illness apparently reflect the judgment that people with these illnesses are, as a class, predictably more violent. This is not necessarily the case. Current research – including the findings of the landmark Surgeon General's Report on Mental Health (1999) - strongly demonstrates that the overwhelming majority of people with mental illness are not violent. And, notwithstanding the publicity that surrounds cases involving violence perpetrated by individuals such as Cho or Russell Weston (the U.S. Capitol shooter), most acts of violence in America are not perpetrated by people with mental illness.

The research does show that a small subset of people with mental illness may pose higher risks of violence. Predictors for increased risks of violence include:

- A past history of violence;
- Non-participation in treatment; and
- Co-occurring abuse of alcohol or illegal substances.[1]

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[1] Swanson, JW, et al, "A National Study of Violent Behavior in Persons with Schizophrenia", Archives of General Psychiatry, 63: 490-499, May, 2006; U.S. Department of Health and Human Services, "Mental Health: A Report of the Surgeon General" (1999), www.surgeongeneral.gov/library/mentalhealth.html; Steadman HJ, Mulvey EP, Monahan J, et

It is important to keep in mind that court orders that restrain individuals from harassing, stalking or threatening an intimate partner or child of an intimate partner, and misdemeanor convictions for domestic violence are all covered under the Brady law.

These categories are probably more directly relevant to potential violence than mental illness per se. The Committee should take a close look at state reporting to the NCIC under them--not as a substitute for inquiries about mental illness, but because they may represent a far greater, direct concern.

Local courts that issue involuntary treatment orders in many cases are the same ones that issue protective orders. From a perspective of administrative priorities, individuals with mental illnesses—illnesses that exist through no fault of their own--should not be singled out in a way that only adds to the stigma that often surrounds the illness. Fundamental fairness is important in administration of the law.

A regulatory process is needed that carefully examines these risk factors and state laws to identify those who should be included in the NICS system and those who should not.

3. **There are no time limits pertaining to mental illness in the federal regulations for the NICS system. Once people are placed on the list, they will remain on the list forever.**

Since NAMI was founded in 1979, significant progress has occurred in our understanding of serious mental illness and in treating these disorders. For example, whereas a diagnosis of schizophrenia was once a life sentence to dependency and suffering, today many people with this disorder recover and live meaningful, productive, and non-violent lives in the community.

The definitions applicable to people with mental illness in the regulations implementing the Brady law entirely ignore the effectiveness of mental health treatment. As stated above, there are no limits in the definition on the length of time a person who meets one of the criteria should be included on the list, nor are there any mechanisms available to petition to have one's name removed from the list.

Interestingly, reporting criteria set forth in the law of California, a state that has been identified as a model for reporting, include durational limits in most categories linked with mental illness. For example, individuals placed under 72-hour holds in psychiatric treatment facilities on the basis of dangerousness to self or others (as was the case with Mr. Cho) are prohibited from possessing firearms for five years following discharge. Moreover, the law includes a mechanism for an individual subject to this prohibition to petition the court to have it lifted based on the

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al, "Violence by People Discharged from Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods", Archives of General Psychiatry 55: 393-401 (1998).

determination that they can possess and use firearms safely. And, individuals under a court-ordered conservatorship due to grave disability are prohibited from possessing firearms as well, but only until they are found to have recovered their capacity and no longer require a conservatorship.

While NAMI is not advocating for verbatim adoption of California's law, we applaud an approach that identifies factors that increase risk of violence by people with mental illness, without being overbroad either in scope or duration.

4. **The Brady law and regulations currently do not contain specific provisions designed to protect the privacy of individuals with mental illness whose names are reported by states and included in the NICS database.**

In 2007, people with serious mental illness continue to encounter stigma and prejudice in all aspects of their lives - housing, employment, and social relationships. And, this prejudice grows every time a horrendous tragedy occurs involving an act of violence connected to a person with a mental illness. In recent weeks, as the issue of gun reporting requirements has garnered national attention, I have received calls from people with mental illness and family members concerned that the overly broad inclusion of people with mental illness within the NICS database could have unintended negative consequences.

For example, we are concerned that the awareness that one's mental health treatment may be linked to inclusion in the NICS database could serve as a deterrent for people to seek and accept treatment when they most need it. We know that there are many factors that impede people's willingness to seek needed treatment, including certain symptoms that may impair a person's awareness of the illness and need for help. Concerns about the inappropriate disclosure of sensitive information about mental health treatment may significantly reduce people's willingness to seek treatment. We know, for example, that many people eschew seeking reimbursement for mental health treatment through private insurance because they fear the consequences of potential disclosure.

Thus, we strongly believe that privacy protections in federal gun reporting laws need to be strengthened. Representative McCarthy has included provisions designed to increase privacy protections in her proposed legislation, HR 297. However, we believe these protections must go further. For example, we recommend that only name and address should be included in the NICS system, with no further information about why the person's name is on the list. And, the law should specify that the FBI, which maintains the NICS system, is prohibited from utilizing or sharing the list for any other purpose or with any other federal or state agency or individual representative. Finally, privacy protections should also apply to agencies and individuals responsible for collecting and providing the information for the NICS database.

In conclusion, NAMI supports efforts to prevent violent individuals from possessing firearms. In accomplishing this laudable goal, it is important to establish criteria that achieve this objective without inadvertently subjecting people with mental illness to further stigma and prejudice which can deter people from seeking treatment when they need it the most. Therefore, NAMI recommends a regulatory process that incorporates current scientific knowledge and brings clarity to this very complex issue.

Thank you for affording us this opportunity to testify.

Respectfully Submitted,

Ronald S. Honberg