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Federal Gun Background Check Rules Create New Alliances

By Kelley Beaucar Vlahos

WASHINGTON – Efforts on Capitol Hill to strengthen federal background checks for gun purchases have brought together some unlikely bedfellows in the wake of the Virginia Tech campus shootings earlier this month.

Wayne LaPierre, president of the National Rifle Association, said his group is working closely with Democrats on new legislation that would make it easier for states to update and transmit records to the FBI involving residents who have been deemed mentally unfit to own a gun.

“If someone is adjudicated by a court of law to be mentally defective, a danger to themselves or others, are suicidal, they should be prohibited from owning a firearm and the record of that adjudication should be included in the background check,” LaPierre told FOXNews.com.

“It has been the NRA’s position for over two decades,” he said.

LaPierre and others have asserted that when Virginia Tech killer Seung-Hui Cho was ordered by a judge to spend a night in a mental health facility in 2005, after which he was remanded to outpatient counseling, the court record of the incident should have been sent by Virginia to the FBI’s National Instant Criminal Check System (NICS).

It was not, and as a result, Cho was able to purchase at a local gun shop the weapons used to kill 32 fellow classmates and professors before killing himself on April 16.

“There should have been a hit on (Cho) in the system,” said LaPierre.

Like many states, Virginia’s guidelines for sending records involving the mentally ill to the feds vary. Reports after Cho’s killing spree indicate that Virginia did not send his record to the FBI because officials did not believe his overnight evaluation or outpatient care qualified as an “involuntary committal” – the threshold dictated under the federal law.

LaPierre said he is working with Reps. John Dingell, D-Mich., and to a lesser extent, Carolyn McCarthy, D-N.Y., a staunch gun control advocate and political nemesis of the

NRA, to make the guidelines more uniform, and to compel states to comply with the law. Currently, only 22 states – including Virginia – report mental health adjudications to the FBI for the NICS database, according to the FBI.

“There must be a penalty for states that don’t do it,” said LaPierre, who said that while “McCarthy is on the wrong side of the Second Amendment, we have consistently supported this and have no problem with it. It makes good public policy.”

According to McCarthy spokesman George Burke, the players are working off the template of the NICS Improvement Act, which she introduced in January. It encourages states through grants to improve their reporting system and penalizes them by withholding some federal dollars for crime programs if they don’t comply over time.

“We see support on both sides of the aisle,” he said.

McCarthy helped steer similar legislation through House passage in 2002, though it languished and died in the Senate. “We have more confidence now just because this issue is on the forefront of everyone’s minds right now,” said Burke.

The legislation would not only improve states’ ability to report people with mental health adjudications, but improve reporting on anyone who is ineligible to own a firearm, including people convicted of a crime punishable by one year or more of prison, a misdemeanor domestic violence charge, those under restraining order and illegal aliens.

“It’s a win-win. A win for gun owners – legitimate gun owners – and a win for folks who want a better system. You don’t want the Chos of the world to have access to firearms,” said one Democratic aide close to the House bill negotiations.

“We’ve been working across party lines and interest group lines and getting close to a final bill,” he added. “We’ve been impressed with the absolute thoroughness that the (NRA) approached this.”

Opponents in the Wings

But lack of resources isn’t the only reason why only half the states hand over mental health records to the feds. There has been mounting pressure on states regarding privacy concerns and the stigmatization of the mentally ill.

Sources say senators concerned about states rights joined with those defending the concerns of the mental health community and managed to kill the McCarthy-inspired Senate legislation, sponsored by Sen. Chuck Schumer, D-N.Y., in 2002.

Schumer said last week that he plans to introduce a companion bill to the House version, though it is unclear whether it will have a better reception today because of the Virginia Tech tragedy.

“I think everyone agrees that this legislation is needed,” said Dan Whiting, spokesman for Sen. Larry Craig, R-Idaho, a consistent supporter of improving background checks but who nonetheless warns Democrats not to overreach.

“What he’s concerned about is whether the new Democratic majority will use this bill as a vehicle for additional gun control measures – that he wouldn’t support.” Whiting said he can count 41 senators right off the bat who would vote against Schumer if that were to happen.

“He’s saying, let’s keep this clean for the sake of getting this done without making a political statement,” Whiting added, noting that Craig is working with Dingell, Schumer and others to make it happen. “I do think he believes that the supporters are working in good faith” to come up with something they all can agree on.

But some gun rights and mental health advocates aren’t buying into the dream just yet. In fact, both say the law requiring that states hand over mental health adjudications be dropped altogether.

“It’s a monumental waste of money,” said David Shern, president of Mental Health America, formerly the National Mental Health Association.

He insists anyone with a real desire to do himself or others harm will find a way to get a gun – illegally if necessary.

“Number two, it perpetuates this myth that if someone is sick at a single point in time and they need involuntary care, that somehow that condition lasts forever,” said Shern. “We know that the vast majority of people who have mental illness and who would need adequate care get well and do better.”

Chris Koyanagi, policy director for the Bazelon Center for Mental Health Law, said the new law “will discourage people to come voluntarily for (mental health) services.”

There are also fears that full mental histories will end up at the FBI and used for other purposes by federal agencies and their private partners.

“What happens to these lists? Are there going to be tight controls in using this data?” she asked.

That is the same concern of Larry Pratt, president of Gun Owners of America, which also fears this is a first step to expanding background checks and moving on to more intrusive gun laws.

“The NRA wrote the background check (law) and any expansion of it doesn’t alarm them,” said Pratt. “These are the kinds of things that caused us to oppose it from the get-go.”

Supporters of new legislation say these concerns are being addressed, and that a new bill should not be seen as a Trojan horse.

“This is by no means new gun control legislation,” said Burke. “We’re just strengthening these laws on the books.”

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