

Ex- convicts and addicts may get DoD clearance

By [Elana Schor](#) and [Roxana Tiron](#)

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At the Pentagon's request, Senate defense authorizers tucked deep within a defense bill a repeal of the department's restriction on granting security clearances to ex-convicts, drug addicts and the mentally incompetent.

The repeal provision now is creating discord between the Senate Armed Services and the Intelligence committees. In its markup of the 2008 defense authorization bill, the Intelligence panel voted to delete the Armed Services provision.

The fate of the provision could become a flashpoint this week as the Senate takes up the bill.

The Senate Armed Services panel seeks to repeal a seven-year-old law that established mandatory standards disqualifying certain people from receiving security clearances.

Under the law, members of the military services, employees of the Department of Defense or contractors working for the Pentagon cannot receive a security clearance if they were convicted of a crime in any U.S. court and went to prison for at least one year; if they are unlawful users of illegal substances; if they are considered mentally incompetent or if they were dishonorably discharged or dismissed from the armed forces.

According to the Senate Armed Services Committee report, the Department of Defense requested the provision's repeal because the mandatory standards "unduly limit the ability of the Department to manage its security clearance program and may create unwarranted hardships for individuals who have rehabilitated themselves as productive and trustworthy citizens."

The law negatively affects individuals who have committed a qualifying crime but have determined trustworthy by "national adjudicative standards," according a Pentagon spokesman. Because the statute only applies to the Pentagon, it hinders clearance reciprocity with other federal agencies, he added.

The Senate Intelligence Committee, however, warned of the dangers of a blanket repeal of the law, which could lead to unintended compromises or mishandling of classified information.

In its report on the bill, the panel said the waiver authority provided to the Pentagon to make the case for certain people who have either been convicted of a crime or have been dishonorably discharged is sufficient in providing flexibility.

Processing waivers can take up to 18 months, according to several industry sources familiar with the process.

The panel also said “an individual who is currently using illicit substances or is mentally incompetent is not suited for access to classified information.”

Although the Intelligence Committee voted 10-5 to oppose the Armed Services panel and the Pentagon’s stance, Chairman Jay Rockefeller (D-W.Va.) and two other panel Democrats made an unexpected break with the majority of the committee.

“As all other members, we would be deeply concerned about the grant of security clearances to persons who have been imprisoned for more than a year or who are current drug users,” Rockefeller and Sens. Russ Feingold (D-Wis.) and Ron Wyden (D-Ore.) wrote in an statement of “additional views” accompanying their panel’s report on the bill.

But the three Democrats endorsed repealing the limit on security clearance standards to expedite the ongoing joint effort to streamline the complex system that began with the Intelligence Reform and Terrorism Prevention Act of 2004, which consolidated the country’s intelligence agencies under one national director.

“[W]e have heard no reason to question … the assessment of DoD and the Armed Services Committee that national security can be protected without this one DoD-specific statute,” the Democrats wrote.

Sen. Kit Bond (R-Mo.), vice chairman of the Intelligence Committee and a fierce defender of classified-information safeguards, wrote his own “additional views” with four fellow Republicans that strongly defended his amendment.

The curb on giving clearances to felons and addicts is a “reasonable measure … that should be preserved,” Bond wrote, with Sens. Olympia Snowe (R-Maine), Orrin Hatch (R-Utah), Saxby Chambliss (R-Ga.) and Richard Burr (R-N.C.). “Further, we believe that we should give serious consideration to extending similar security clearance restrictions to the rest of the Intelligence Community.”

The Pentagon is the largest user and granter of security clearances in the government, with 2.5 million clearances of the 3.2 million total, according to 2006 Pentagon data.

The Department of Defense has been plagued for several years with a large backlog of security clearances, and contractors with an already granted security clearance have become a hot commodity.

Rep. Elijah Cummings (D-Md.) knows from one constituent that the restriction — dubbed the Smith Amendment for its original author, former Sen. Bob Smith (R-N.H.) — would take away jobs and opportunities from “hard-working Americans who made mistakes in the past, but have served their time.”

He said the law does not affect one person alone, but people who have given their “blood, sweat and tears to this country,” and who have paid the price for their mistakes.

A constituent in his district who had worked for DISA for 20 years and had a security clearance despite a two-year jail term in the 1970s was facing the prospect of losing a his job, benefits and retirement pay, Cummings said in an interview.

Cummings, who introduced a separate bill in the House, stressed that the Pentagon

regularly runs security checks on all its employees.

"There is no need to include an added burden," he said. "I am very much concerned about making sure that we in this post-9/11 period be very careful." He said the legislation provides the right balance in addressing homeland security and protecting the rights of people who may have made mistakes in the past but received security clearance "over and over."

Because President Bush has threatened to veto the defense authorization bill, it is important to have a standalone bill that is supported by the Pentagon, Cummings added.

Alan Chvotkin, senior vice president and counsel at the Professional Services Council, said his organization has pushed for uniform standards across the government for receiving security clearances.

"We have always supported a risk-based adjudication," he added. "No single factor in and of itself should be the reason why [individuals] should be denied a clearance. That should be a professional judgment by the adjudicator."

The number of people found ineligible for a DoD security clearance under the provisions of the Smith Amendment is relatively small, said the Pentagon spokesman.

"This is not some kind of affirmative action for convicts," Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists, said. "We're not talking about giving clearances to psychopaths and drug dealers, but preserving the ability to employ people who may have been convicted of a crime decades ago in a period of their life they have long since outgrown."

Removing the restriction opens the door to security clearances for high-profile felons, such as I. Lewis "Scooter" Libby, the senior White House aide whose prison sentence was commuted by President Bush last week.

"Could a Scooter Libby be hired by DoD?" Aftergood said. "The answer is, he wouldn't be automatically disqualified."

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