



MENTAL ILLNESS AND FIREARM LAWS

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FIREARM PROHIBITIONS

Both federal and state laws prohibit people with psychiatric disabilities from possessing, purchasing, or otherwise acquiring firearms.

Both federal and state laws contain procedures under which such people can get relief from this disability.

The Department of Mental Health and Addiction Services (DMHAS) must maintain information on admissions for certain psychiatric patients and make the information available to the Department of Emergency Services and Public Protection (DESPP) commissioner to carry out certain firearm-related obligations under the gun laws.

ISSUE

What are the laws on the possession or acquisition of firearms by people with a mental illness?

SUMMARY

Federal law prohibits anyone "adjudicated as a mental defective" or "committed to a mental institution" from shipping, transporting, receiving, or possessing firearms or ammunition, unless granted relief under a federally approved program.

State law contains certain prohibitions as well. State law applies to anyone:

1. discharged from custody within the preceding 20 years after having been found not guilty of a crime by reason of mental disease or defect;
2. who was confined on or after October 1, 2013, in a psychiatric hospital under a probate court order within the past (a) 60 months or (b) 12 months, if the person has a valid permit or certificate in effect before October 1, 2013;
3. who, beginning October 1, 2013, was voluntarily admitted to a psychiatric hospital within the past six months for care and treatment of a psychiatric disability, and not solely for being an alcohol or drug-dependent person; or
4. who is prohibited by federal law from possessing or acquiring firearms on specified grounds, including mental health grounds.

Under state law, these people are prohibited from:

1. possessing firearms or ammunition([CGS §§ 53a-217\(a\)](#), [-217c\(a\)](#)),
2. getting a permit or an eligibility certificate for a handgun ([CGS §§ 29-28](#), [-36f](#)),
3. getting an eligibility certificate for a long gun ([CGS § 29-37p](#)),
4. purchasing or otherwise acquiring firearms ([CGS §§ 29-33](#), [-37a](#)), or
5. getting an ammunition certificate ([CGS §§ 29-38n](#), [-37p](#)).

State law allows courts to authorize seizure of firearms from people in imminent danger of harming themselves or anyone else. In determining whether such danger exists, the court may consider the person's prior involuntary confinement in a psychiatric hospital ([CGS § 29-38c](#)).

The law requires the Department of Emergency Services and Public Protection (DESPP) commissioner to verify, by checking with the Department of Mental Health and Addiction Services (DHMAS), that a person seeking a gun credential (such as a gun permit) was not confined in a psychiatric hospital within the preceding 60 months by probate court order, or voluntarily admitted to such a hospital within the preceding six months, for treatment ([CGS § 29-38b\(a\)](#)). It requires psychiatric hospitals to notify the DHMAS commissioner of anyone voluntarily admitted for psychiatric treatment, except when the treatment is solely alcohol or drug-related. Probate courts must notify DHMAS of involuntary commitment orders ([CGS § 17a-499](#)).

The rest of this report provides additional information on the (1) federal prohibition on gun ownership and possession by people with psychiatric disabilities, (2) gun seizure law, and (3) requirement for DHMAS to provide information to the DESPP commissioner to fulfill her obligation under the gun laws.

FEDERAL LAW PERTAINING TO MENTAL ILLNESS AND GUNS

Prohibitions

Federal law prohibits a person from transporting, receiving, possessing, or shipping firearms or ammunition if he or she has been “adjudicated as a mental defective” or “committed to a mental institution.” It also prohibits anyone from knowingly selling or otherwise providing any firearm or ammunition to these people if the provider knows or has reasonable cause to believe that they are ineligible (18 USC §§ 922(d)(4), (g)(4)). According to federal regulations, a person has been “adjudicated as a mental defective” if a court, board, commission or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

1. is a danger to himself, herself, or others, or
2. lacks the mental capacity to contract or manage his or her own affairs (27 CFR § 478.11).

The term “adjudicated as a mental defective” includes a finding of (1) not guilty by reason of insanity in a criminal case or (2) incompetence to stand trial or not guilty by reason of mental responsibility in a military court martial (*id.*).

Federal regulations define a person as “committed to a mental institution” if a court, board, commission, or other lawful authority has formally committed him or her to a mental institution. The term is defined to include involuntary commitments for “mental defectiveness or mental illness.” It also includes commitments for other reasons, such as drug use, but does not include people admitted to a mental institution voluntarily or for observation (*id.*). (The Department of Justice has proposed amending the regulations to include people ordered to receive outpatient treatment—see 79 Fed. Reg. 774 at <http://www.gpo.gov/fdsys/granule/FR-2014-01-07/2014-00039>.)

Federal law contains a court procedure for restoring privileges lost because of a federal adjudication or commitment (P.L. 110-108). State law contains a similar court procedure for restoring such privileges lost because of a state adjudication or commitment (CGS § 45a-100).

(Since October 1992, ATF’s annual appropriation has prohibited the expending of any funds to investigate or act upon applications for relief from federal firearms disabilities submitted by individuals (see <https://www.atf.gov/content/how-can-person-apply-relief-federal-firearms-disabilities>)).

GUN SEIZURE FROM PEOPLE POSING IMMINENT HARM

The law allows any two police officers (or a state's attorney), under limited circumstances, to get warrants and seize guns from anyone who poses an imminent risk of injuring himself or herself or someone else. The officials may seek the warrant only after (1) conducting an independent investigation to establish probable cause and (2) determining that no reasonable alternative exists to avert the risk of harm.

In determining grounds and probable cause for issuing a warrant, the judge must consider any recent threat or violent act the person directed at himself or herself or others or recent acts of animal cruelty. In determining whether the threats or acts constitute probable cause to believe a risk of injury is imminent, the judge may consider, among other specified factors, if the person was ever involuntarily confined to a psychiatric hospital.

If satisfied that probable cause exists, the judge must issue the warrant ([CGS § 29-38c](#)). The court must hold a hearing within 14 days after the seizure to determine whether to return the guns or order them held for up to one year. If the court finds that the risk of harm is imminent, it must notify DMHAS, which must take specified action.

DESPP AND DMHAS

The law requires the DESPP commissioner to verify, by checking with DHMAS, that a person seeking a gun credential has not been confined in a psychiatric hospital within the preceding 60 months by probate court order, or voluntarily admitted to such a hospital within the preceding six months, for treatment ([CGS 29-38b\(a\)](#)). (The credentials are a permit to carry or sell handguns, an eligibility certificate for a pistol or revolver, a certificate of possession for an assault weapon, or a long gun eligibility certificate.) By law, DMHAS must maintain confinement and admission information and provide such information to the DESPP commissioner to carry out her obligations under the gun laws ([CGS § 17a-500\(b\)](#)).

The law requires psychiatric hospitals to notify the DHMAS commissioner of anyone voluntarily admitted for psychiatric treatment, except when the treatment is solely alcohol or drug-related ([CGS § 17a-506](#)). DMHAS must obtain from DESPP the status of applications from anyone involuntarily committed or voluntarily admitted and advise the psychiatric hospital of this ([CGS 17a-500\(c\)\(3\), \(4\)](#)).

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