

Gun Laws and the Involuntarily Committed: A California Road Map

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The 2007 incident at Virginia Tech brought the question of gun ownership by the mentally ill to the forefront of public attention. Moreover, it underscored the potentially devastating consequences of the imperfect connection between federal and state laws that apply to the right of gun ownership by a psychiatric patient. The laws are complex, and, as demonstrated in this article, conflicting. We present a case report of an involuntarily committed patient in the state of California, and discuss details of state and federal laws that applied to him.

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The 2007 shootings at Virginia Tech by a mentally ill man focused attention on gun ownership by the mentally ill and underscored the imperfect connection between state and federal statutes.¹ It has been argued that had federal laws been followed, they would have superseded Virginia law, and the student would have been prevented from purchasing guns.¹ A significant complication arises when a patient is informed of gun ownership restrictions based only on local state requirements that may be at odds with federal law.

All psychiatrists in clinical practice should be familiar with federal laws that apply to their patients' Second Amendment rights. Moreover, they should be aware of state statutes, since local courts, as well as patients, may invoke, or mandate, their professional input.²

In this article, we present the case of a patient in California whose psychiatric status made him subject to conflicting federal and state prohibitions. The full spectrum of California gun ownership statutes and their application to the psychiatric patient has been

reviewed elsewhere.³ For simplicity, we have narrowed our focus to the case of an involuntarily hospitalized patient and have provided a step-by-step analysis of a conflict between state and federal law.

Case History

An adult male, Mr. M., was brought to an emergency room from an outpatient clinic. In response to behavioral outbursts, the clinic staff initiated an involuntary 72-hour hold pending transfer to the hospital. After evaluation in the emergency room, Mr. M. was admitted on the basis of being a danger to self and others, and gravely disabled.

The involuntary admission was extended with a 14-day commitment at the conclusion of the 72-hours, due to continued danger to self and grave disability, but no longer as a danger to others. Following California law, a probable-cause hearing took place at the hospital within 4 days of the 14-day certification. A court-appointed hearing officer upheld the commitment. Before the conclusion of the 14 days, Mr. M. improved, and he was discharged with close follow-up. He remained stable and did not require further inpatient care.

Five years after his release, while in the process of obtaining a job, Mr. M. failed clearance checks for gun ownership. He petitioned a local court to grant restoration of his gun ownership right. The California court found him capable of using firearms in a safe and lawful manner, and his gun ownership right

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was restored. Regardless, he continued to fail background checks.

Upon inquiry, Mr. M. received a notice from the Federal Bureau of Investigation (FBI) stating that identifying information had matched him as “a person who has been adjudicated as a mental defective” and therefore subject to indefinite gun ownership prohibition. The letter referred to Title 18 of the United States Code § 922(g)(4)⁴ as the relevant federal statute and *United States v. Buffalo*,⁵ and *Redford v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*,⁶ as precedent case law. Mr. M. contacted our psychiatric service for clarification.

Discussion

In California, the treatment of psychiatric emergencies is statutorily restricted to three categories of impairment: danger to self, danger to others, and grave disability.⁷ Mr. M. met all three criteria at the time of his admission to the emergency room. Any of the three can justify an involuntary hold in a designated psychiatric hospital for a period of up to 72 hours. At the conclusion, the admission can be extended for a period of 14 days. However, unlike the 72-hour hold, a 14-day commitment requires a legal hearing within 4 days from the start of the certification. A court-appointed representative conducts the hearing at the admitting facility. The patient may appeal an adverse decision by requesting a writ of *habeas corpus*.⁷

When Mr. M. was placed on a 72-hour hold in the clinic, California law required that he be transported to a designated facility and assessed there by a psychiatrist.⁸ Had he been assessed and not admitted, according to California case law, no gun-ownership prohibition would have applied.³ However, as the psychiatrist decided to admit Mr. M., a five-year California gun-ownership prohibition from the time of his release from the institution was imposed.⁹ Attending physicians are legally mandated to report all 72-hour holds to the state.² California’s department of justice, which performs background checks on individuals attempting to purchase firearms, implements this law.³

Federal laws also rely on such state databases to track prohibited individuals. However, until 2008, not all states maintained one.² The NICS Improvement Act of 2007 encourages reporting by providing financial incentives for states to update and improve

their record keeping and by providing financial penalties for states that do not track and report prohibited individuals.¹⁰

A 72-hour hold based on grave disability alone does not trigger prohibition. The California five-year ban applies only to 72-hour holds on the basis of being a danger to self or others. However, a 14-day certification on any grounds, including grave disability, also triggers a five-year prohibition. From a federal standpoint, no prohibition is in effect up to the point of the judicial 14-day commitment hearing. Once that commitment is upheld, regardless of criteria, an indefinite ban is triggered.

In the instant case, Mr. M. was certified as a danger to self and was considered gravely disabled in the 14-day hearing. Therefore, not only was he prohibited from purchasing guns for five years in California, he was also indefinitely prohibited by federal statute. Federal law superseded the California statute, even if the state court’s later decision made him eligible to possess a firearm.

In 1968, Congress enacted the Gun Control Act with the intention of keeping guns away from individuals who were considered, or had the potential to be, dangerous.¹¹ In reference to the mentally ill, the Act⁴ states: “It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport . . . or possess . . . any firearm or ammunition.”

The terms adjudicated as a mental defective and committed to a mental institution were defined by the Department of the Treasury in 1997.¹¹ Today, that language is still applicable and can be found in the Title 27, Chapter 2 of the Code of Federal Regulations.¹² “Adjudicated as a mental defective” means:

. . . determination by a court, board, commission, or other lawful authority that a person, as result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: 1. is a danger to himself or others or 2. lacks the mental capacity to contract or manage his own affairs [Ref. 9, Title 27, Chapter 2].

“Committed to a mental institution,” is defined by:

. . . a formal commitment of a person to a mental institution by a court, board, commission, or other legal authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for obser-

vation or a voluntary admission to a mental institution [Ref. 12, Title 27, Chapter 2].

Confusion is created by the phrase “commitment to a mental institution involuntarily.” Since the Congress has never clarified the word “commitment,” various courts have adopted different approaches to its interpretation. Some courts have relied on state statutes, others on the intentions of the Congress.¹¹ It has been suggested that a formal hearing by a court, or its arm, is necessary to establish that a patient has been formally committed to a mental institution and that involuntary admissions, up to the point of a formal hearing, should not be considered part of a commitment.¹¹ However, not all courts apply this reasoning.^{11,13} As federal law pertains to the patient described in the case report, once his commitment was upheld, he was indefinitely prohibited. All admission procedures before that point are considered “observation” only.³

As noted earlier, the FBI letter that Mr. M. received referred to Title 18 of the United States Code, § 922 (g)(4),⁴ *United States v. Buffalo*,⁵ and *Redford v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*.⁶ The latter two cases serve as precedent case law in support of continued federal firearms prohibition, even when a release has been granted by a state.

Redford was decided in 1982. Mr. Redford had been found not guilty by reason of insanity for a charge in 1974. When he was rearrested in 1979 for menacing his housekeeper, the police confiscated his collection of firearms and ammunition. The charge was dismissed, and a county judge ordered the guns returned. As his attorney appeared at the sheriff's department to take custody of the firearms, a federal agent took possession of them.

Mr. Redford appealed in federal court, claiming that the term “mentally incompetent,” not defined in the federal code, was unconstitutionally vague. The court of appeals disagreed. It stated, “[W]e believe people of common intelligence would understand that language to include persons found not guilty of a criminal charge by reason of insanity” (Ref. 6, p 473). The statement referred to Congress' intentions to keep guns out of the hands of those who “may not be trusted to possess a firearm without becoming a threat to society” (Ref. 6, p 473). In addition, the court held that the prohibition would apply regardless of whether the person had regained his or her

sanity and competency or had been released from confinement.

In an earlier, related case in 1971, Mr. Buffalo⁵ was charged with the purchase of pistols while falsely denying that he had ever been “adjudicated as a mental defective.” His record included a prior finding of not guilty by reason of insanity and subsequent commitment to a state hospital. Upon appeal, the Fourth Circuit of Appeals upheld the firearm prohibition, finding that his discharge from the state hospital did not reverse the indefinite prohibition imposed by 18 U.S.C. 922(d)(4).

In terms of remedy, a patient may petition a local California court to have his right restored before the end of the statutory five years. Federally, he has to provide evidence that he was mistakenly “adjudicated as a mental defective.” In fact, the FBI letter demanded a correction notice by the committing agency establishing that the commitment procedure was incorrect or erroneous. In this case, upon review of the records, we informed Mr. M. that evidence of an erroneous involuntary commitment was lacking. In addition, we informed him that his gun ownership eligibility in the state of California was superseded by an indefinite ban from the federal government.

Of interest, since the NICS Improvement Act of 2007 became law, a state may establish a qualifying program that provides relief from federal firearms prohibition. For the relief to occur, a court, or other lawful authority, must find, based on “records and reputation,” that the person will not be likely to act in a “manner that is dangerous to public safety,” and that “granting the relief will not be contrary to the public interest.”¹⁴

In summary, at the very least, psychiatrists in clinical practice should be familiar with the federal statutes described herein. Furthermore, given that some states have stricter standards of prohibition than those mandated by the federal government, awareness of local statutes is prudent.² When it comes to inpatient treatment, a patient may be well served by the psychiatrist's explanation of the legal consequences of a voluntary admission versus that of an involuntary commitment, as these pertain to the right of firearm possession.

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