

## Appendix 12-1 Involuntary Commitments and Federal Firearms Disabilities<sup>1</sup>

From: Lieberman, David C.  
Sent: Tuesday, September 07, 2010 3:53 PM  
To: Aldridge, John  
Subject: RE: involuntary commitments

John, per our phone call and e-mails, I have finished my review of this issue. For your information, I have also run my response by an attorney in ATF HQ who has dealt with similar issues in the past and am advised that HQ concurs with this response. I apologize for the length of this e-mail, but I decided to make it fairly detailed in case you are questioned about this issue in the future.

The question you presented is whether a person who has the record of his or her juvenile involuntary commitment expunged under N.C. Gen. Stat. § 122C-54(e) is subject to Federal firearms disabilities under the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44. The brief answer is that such an expungement does not remove the disability.

As you know, the GCA makes it "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 in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(4).

While the GCA does not define the term "committed to a mental institution," the implementing regulations define the term to mean a "formal commitment of a person to a mental institution by a court, board, commission or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution." 27 C.F.R. § 478.11.

As an initial matter, it is clear that a person who has been involuntarily committed as a juvenile under North Carolina law falls within the definition of someone who has been "committed to a mental institution," as the commitment comes after a hearing in front of a State district court judge. As a result, the person would be subject to the Federal firearms disabilities imposed by 18 U.S.C. § 922(g)(4).

In determining whether a subsequent expungement under section 122C-54(e) serves to remove that disability, I reviewed both the GCA and the NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. No. 110-108. For your information, the

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NIAA provides that a State may set up relief from disabilities programs for persons previously committed to a mental institution as described in the GCA. As set forth below, my opinion is that such an expungement does not remove the firearms disability.

In this regard, while the GCA provides that what constitutes a conviction of a "crime punishable by imprisonment for a term exceeding one year" does not include any conviction "which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored," 18 U.S.C. § 921(a)(20), there is no similar language in the definition of the term "committed to a mental institution." Similarly, while the language of the NIAA refers to "relief from disabilities" it does not include language about "expunged" commitments. So, under strict construction principles, it does not appear that a subsequently expunged involuntary commitment such as one addressed in N.C. Gen. Stat. § 122C-54(e) relieves a person of the Federal firearms disabilities contained in 18 U.S.C. § 922(g)(4). Had Congress intended to exclude "expunged" commitments, it would have done so in the NIAA, since it was aware that a person with an expunged conviction was no longer subject to the firearms prohibitions contained in the GCA. Finally, I note that section 122C-54 does not set forth a legal standard for issuance of the expungement. While it is arguable that existence of a statutory standard for granting expungement would make the process more like the relief process envisioned in the NIAA, the lack of such a standard at the present time makes such analysis impossible. Thus, a person who has his or her juvenile commitment expunged under N.C. Gen. Stat. § 122C-54(e) is still subject to Federal firearms disabilities.