Appendix D
Involuntary Commitment and the Federal Gun Control Act

Robert Stranahan, "Involuntary Commitment and the Federal Gun Control Act," *from* Second Annual Civil Commitment Conference (Jan. 23, 2004) (training program co-sponsored by UNC School of Government and Office of Indigent Defense Services)

INVOLUNTARY COMMITMENT AND THE FEDERAL GUN CONTROL ACT

(A) RELEVANT STATUTES

18 U.S.C. 922 (g)(4)
It shall be unlawful for any person –
(4) 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 interstate 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(a)(6)
It shall be unlawful –
(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

18 U.S.C. 925(c) Relief from Disabilities
A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice . . . .

However, the ATF states on its website that it cannot currently entertain any individual's request for firearms restoration: "Since 1992, . . . ATF's annual appropriation has continuously prohibited the expending of any funds to investigate or act upon applications for relief from Federal firearms disabilities."
See www.atf.treas.gov/firearms/faq/faq2.htm
[ATF's current website, www.atf.gov/forms/download/atf-f-3210-1-notice.html, continues to reflect this position.]

18 U.S.C. 921 Definitions
(a)(3) The term **"firearm"** means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

N.C.G.S. 122C-54 Exceptions; abuse reports and court proceedings
(a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.
(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed.
[Additional pertinent subsections were added to G.S. 122C-54 by S.L. 2008-210 and S.L. 2009-299.]

N.C.G.S. 14-404 Issuance of refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.
(c) A permit may not be issued to the following persons:
(4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.
(This statute applies to permits for pistols and crossbows).
[Additional pertinent subsections were added to G.S. 14-404 by S.L. 2008-210.]

(B) FEDERAL REGULATIONS

27 CFR 178.11 Adjudicated a mental defective [recodifed as 27 CFR 478.11]
(a) A determination by a court, board, commission, or other lawful authority, that a person, as a 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 manage his own affairs.

(b) The term shall include –
(1) A finding of insanity by a court in a criminal case; and
(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876(b).

27 CFR 178.11 Committed to a mental institution [recodified as 27 CFR 478.11]
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 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 observation or a voluntary admission to a mental institution.

27 CFR 178.11 Mental institution [recodified as 27 CFR 478.11]
Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

For more information:
61 FR 47095 Notice of proposed rulemaking. September 6, 1996.
62 FR 34634 Final rule, Treasury decision. June 27, 1997.

(C) CASE LAW APPLYING 18 U.S.C. 922(g)(4)

U.S. v. Hansel, 474 F.2d 1120 (8th Cir. 1973)

Nebraska law provided a two-step procedure for determining if a patient was mentally ill and in need of hospitalization:

1) the patient may be temporarily hospitalized, up to 60 days, for observation if the County Mental Health Board determines he is mentally ill and in need of hospitalization, and

2) the patient may later be committed to the hospital if the superintendent determines he is mentally ill and should be admitted, and certifies this to the Board.

Defendant had been hospitalized under step #1. He was found not to have a serious mental disorder and was released after two weeks. Step #2 was not reached. The Court found that this **did not count** as a commitment.

U.S. v. Giardina, 861 F.2d 1334 (5th Cir. 1988)

Louisiana law provides for "admission by emergency certificate." A doctor examines the patient and certifies mental illness or substance abuse, and dangerousness. This allows for transportation and admission to the hospital. Within 72 hours of admission, examination by a second doctor is required. If the patient is to be held beyond 15 days, there must be a judicial commitment.

Giardina was admitted under this procedure, but discharged by the hospital before a hearing was required. The Court found that this **did not count** as a commitment.

U.S. v. Waters, 23 F.3d 29 (2d Cir. 1994)

New York state law allows for involuntary hospitalization based on an application for admission by a relative or other qualified person, followed by certificates from two doctors that the patient is in need of involuntary treatment. The patient can request a hearing at any time during the first 60 days of hospitalization. There is no automatic hearing. After 60 days, the hospital can request a hearing to further extend the involuntary hospitalization, or the patient can sign himself in as a voluntary patient.

Mr. Waters did not request a hearing, and signed himself in voluntarily at the 60-day mark. He was released seven months later.

The Court found that this **did count** as a commitment.

U.S. v. Whiton, 48 F.3d 356 (8th Cir. 1995)

Defendant had been involuntarily admitted to a hospital in Texas after an application for commitment, examinations by two psychologists, and a court order committing him for up to 90 days. This **did count** as a commitment.

U.S. v. Chamberlain, 159 F.3d 656 (1st Cir. 1998)

Maine law allows for involuntary emergency admission based on:

1. an application (by anyone) alleging mental illness and likelihood of serious harm,

2. examination by a doctor on the same day, certifying mental illness and likelihood of serious harm,
3. a Judge reviews the application/certification, endorses them as having been prepared in accordance with the law, and orders admission to the hospital for up to 5 days, and
4. a second doctor examines the patient within 24 hours of admission and also certifies mental illness and likelihood of serious harm.

Within those first five days of hospitalization, the hospital may seek an involuntary commitment in district court. This is a full adversarial hearing with counsel provided for the patient. The patient may also convert to voluntary status, in which case there is no hearing.

Mr. Chamberlain signed voluntary during the first five days. The Court found that this **did count** as a commitment.

U.S. v. Midgett, 198 F.3d 143 (4th Cir. 1999)

Defendant had been charged with breaking and entering in Virginia, and the court ordered an evaluation of his competence to stand trial. After reviewing the doctor's report and hearing evidence, the court concluded he was not competent to stand trial and needed inpatient care to treat his mental illness and restore him to capacity. Defendant was ordered into the hospital for treatment. After two months of treatment, doctors concluded he was not competent for trial and was not restorable for the foreseeable future, but was also not dangerous to self or others. Defendant went home after the DA declined to pursue the case.

Defendant later was arrested by the Secret Service and charged with possession of firearms in violation of 18 U.S.C. 922(g)(4). The Court concluded that defendant's confinement for restoration of competency **did count** as a commitment.

U.S. v. Vertz, 102 F.Supp. 2d 787 (2000)

Defendant was admitted to a Michigan hospital based on a nurse's petition, accompanied by a doctor's certificate stating he was mentally ill, dangerous to self and others, and in need of treatment. Defendant consented to treatment pending his court hearing. A second doctor also certified that he was mentally ill and dangerous. At the hearing, the Probate Court found mental illness and need for treatment, but discharged Vertz from the hospital after finding that less restrictive treatment was appropriate and available.

The Court found that this **did count** as a commitment.

U.S. v. Buffaloe, 449 F.2d 779 (4th Cir. 1971)

Defendant had been found not guilty by reason of insanity of a Virginia charge of maiming. After his release from the hospital, he was charged under 18 U.S.C. 922. The Court found that the NGRI hospitalization **did count** as a commitment.
See also Redford v. U.S. Dept. of Treasury, Bureau of Alcohol, Tobacco and Firearms, 691 F.2d 471 (10th Cir. 1982).

(D) ADVISING YOUR CLIENT

Commitment result	Is right to firearm lost?
Inpatient or split commitment	Yes
Substance abuse commitment	Probably
Outpatient commitment	Probably
Conversion to voluntary status before hearing	Maybe
Direct discharge before hearing	Maybe
Discharge by the court at commitment hearing	Maybe
Voluntary from start to finish	No

Your client is in the hospital on involuntary commitment papers, pending the 10-day hearing. **What can you do to minimize the damage** to his firearm rights?

1) If the client agrees to be in the hospital for treatment, convince the doctor to allow him to sign in voluntarily. For minors, get the parent or guardian to sign a request for voluntary admission (if the doctor will allow it).

2) Get the doctor to directly discharge the client before hearing. This can include continuing the case a week at a time until the client leaves.

3) If your client is a minor, advise him to expunge his commitment record when he reaches the age of 18. It is not clear that expungement will restore the right to possess a firearm, but it can't hurt.

The ethical question: If you do not advise your client about the Gun Control Act, have you violated the Rules of Professional Conduct?
In particular, consider Rule 1.4: Communication

Questions, comments, advice?
Robert Stranahan
Office of Special Counsel, Central Regional Hospital
300 Veazey Road
Butner, N.C. 27509 (919) 764-7110 Robert.P.Stranahan@nccourts.org