

Chapter 4 - Mental Illness and Gun Control



Personally, I favor strict gun control laws. But I also believe that there should not be stigma against people with mental illness.

People should be able to see a mental health professional with the confidence that their treatment will be confidential. As I stated earlier during the discussion of the three cases in Chapter One, the exception to this latter point is when the mental health professional believes that the person is a danger to themselves, or someone else. Then the mental health professional is obligated to notify the authorities, and/or hospitalize the patient. This obligation should not be a secret to the patient. Anyone seeing a therapist should understand that there is an ethical and moral obligation to report a patient if they fit into said circumstances.

There are, however, grey areas. There was an op-ed piece in the New York Times by Ms. Wendy Burton, a former political speech writer, titled "Please Take Away My Right to a Gun." Ms. Burton argues that although she might be tempted to get a gun for her own protection, she also realizes that her depressed condition would make her more likely to use it against herself.

She quotes statistics from the Center for Disease Control and Prevention, stating that 38,364 Americans committed suicide in 2010. Of those, 19,392 used a gun.

Federal Law Concerning Mental Illness and The Right to Own a Gun

Possession of a firearm by the mentally ill is regulated by both state and federal laws. The federal law states:

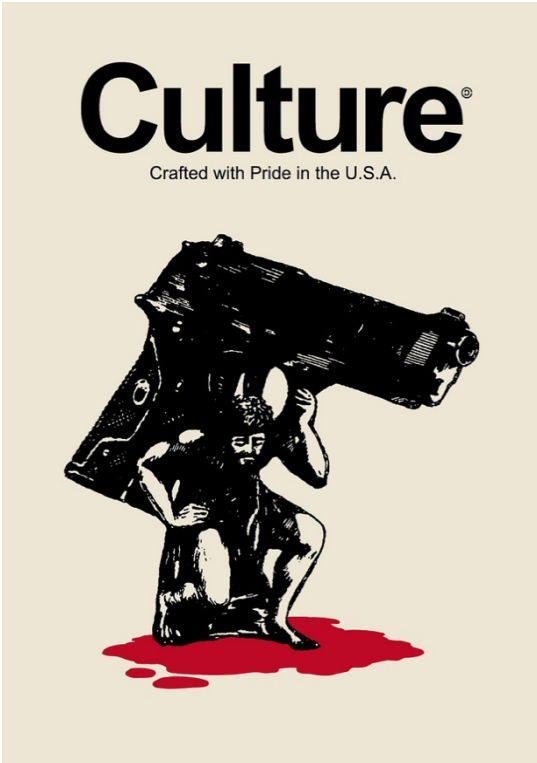
“It is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person “has been adjudicated as a mental defective or has been committed to any mental institution.”

“Mentally defective” is obviously an outdated term that would probably be interpreted to mean “mentally disabled” today (low IQ, significant brain damages, etc.). I assume that the term “committed” is in regards to a mental institution; meaning some type of involuntary hospitalization.

However, in some states a person can “commit” themselves to a hospital and then be held against their will for a certain period of time; even if they change their mind and wish to leave. If a person is held in a mental hospital against their will but is then released by a judge, or a senior doctor after the circumstances are clarified, is that person considered to be committed?

What about a person who voluntarily enters a mental hospital to be treated for a mental condition completely unrelated to any potential violence? For example, hospitalization for anorexia, incapacitating obsessive compulsive disorder, addiction to pain medication prescribed by doctors, etc. In fact, if the condition was such that the person couldn’t care for themselves, they might have even been admitted on an involuntary basis.

State Laws Concerning Mental Illness and Right to Own a Gun



The wording of various state laws can get confusing according to the NCSL (National Conference of State Legislatures) website. All I can say is that it is quite a mixed bag on this subject. My state of California says the following:

A person is barred from possessing, purchasing, receiving, attempting to purchase or receive, or having control or custody of any firearms if the person:

1. Has been admitted to a facility and is receiving in-patient treatment for a mental illness and the attending mental health professional opines that the patient is a danger to self or others. This prohibition applies even if the person has consented to the treatment, although the prohibition ends as soon as the patient is discharged from the facility.
2. Has been adjudicated to be a danger to others as a result of a mental disorder or mental illness or has been adjudicated to be a mentally disordered sex offender. This prohibition does not apply, however, if the court of adjudication issues, upon the individual's release from treatment or at a later date, a certificate stating that the person may possess a firearm without endangering others.
3. Has been found not guilty by reason of insanity of enumerated violent felonies. A person who is found not guilty by reason of insanity of other crimes is barred from possessing firearms unless a court finds that the person has recovered his or her sanity.
4. Has been found mentally incompetent to stand trial, unless there is a subsequent finding that the person has become competent.

5. Is currently under a court-ordered conservatorship because he or she is gravely disabled as a result of a mental disorder or impaired by chronic alcoholism.

Oklahoma prohibits knowingly transferring a firearm to:

1. A mentally or emotionally unbalanced person. (Pretty vague).

Texas goes into a great deal of detail: A person is ineligible for a license to carry a concealed weapon if the person:

1. Has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability.
2. Suffers from a psychiatric disorder or condition described by Subdivision (1) that: (A) is in remission but is reasonably likely to redevelop at a future time; or (B) requires continuous medical treatment to avoid redevelopment.
3. Has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person's own affairs; or
4. Has entered in a criminal proceeding a plea of not guilty by reason of insanity.

The following constitutes evidence that a person has a psychiatric disorder or condition described by section (1), above:

1. Involuntary psychiatric hospitalization
2. psychiatric hospitalization
3. inpatient or residential substance abuse treatment in the preceding five-year period
4. diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or
5. diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to – schizophrenia or delusional disorder

6. bipolar disorder
7. chronic dementia, whether caused by illness, brain defect, or brain injury
8. dissociative identity disorder
9. intermittent explosive disorder; or
10. antisocial personality disorder

The other states vary greatly. Of course the big question might be how is this information determined.

Hospital Records, Gigantic Database or Honor System?



Will the information used to prevent someone from getting a gun permit come off of insurance records, Medicaid, Medicare forms, etc.? Will there be a gigantic database of all

mental health treatment? Or will this just be the honor system of the person applying for a gun permit?

What will happen if someone reports to the government that they know so and so was treated for a mental condition by such and such doctor or hospital and shouldn't have a gun permit? Will mental health professionals have to release their records or have to testify about their non-hospital treatment? Will there be any obligation if a therapist learns in the course of therapy that a patient is applying for a gun permit but actually doesn't meet the criteria of the state or perhaps of some new all encompassing federal law?

Let's Have a Dialog About This Subject

Now is the time for mental health professionals to join in the dialog that this country is going through. It may be very helpful to mental health professionals and patients if we participate in this national discussion. What should the law be concerning mental illness and the right to own a gun and how should such a law be worded?