Mental Health Emergency Detentions and Access to Firearms

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Introduction
Following the tragic shootings in Newtown (Connecticut), Aurora (Colorado), Isla Vista (California) and others, increased national attention has focused on the relationship between mental illness and gun violence. While some have called for enhanced regulation of firearm possession by persons with mental illness, others have argued that such actions would be ineffective and enhance stigma associated with mental illness while discouraging treatment seeking.

Against this background, the Supreme Court and lower federal courts have wrestled with the impact of the U.S. Constitution’s Second Amendment on federal, state, and local gun laws. In 2008, in District of Columbia v. Heller, the Supreme Court ruled that the Second Amendment granted an individual right to own guns that was infringed by a law essentially banning handgun ownership in Washington, D.C. But the Court also concluded that certain longstanding restrictions — including on possession of firearms by the “mentally ill” — were “presumptively lawful.”

The Heller Court, however, left many questions unanswered, including what types of mental health status constitutionally can be used to deny gun ownership.

This article addresses one issue regarding mental health and guns: can a temporary, emergency mental health detention (as opposed to a full-blown involuntary commitment) disqualify a person from gun ownership? We review the epidemiologic evidence and recent case law.

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Civil Commitment
Involuntary civil commitment refers to the process of hospitalizing an individual, against his or her will, for the purpose of receiving psychiatric care. States determine the standards for civil commitments, which can be temporary emergency detentions or longer-term involuntary commitments.

An emergency detention refers to a short-term (typically 24 to 72 hours) involuntary hospitalization, during which an individual receives psychiatric care. These detentions occur to prevent an individual from imminently harming himself or others, and they provide an opportunity for mental health professionals to conduct an assessment and determine the need for ongoing psychiatric care. States generally provide limited procedural protections for individuals temporarily confined against their will, justified by the exigent circumstances and limited duration of the detention.

In most states, an individual may be released from an emergency detention if he or she is found to no longer pose a danger to themselves or others due to a mental health condition.

Mental Health Status and Violence
Contrary to the impression given by some in the media following highly-publicized shootings, most persons with mental illness — including serious mental illnesses like schizophrenia — are never violent. In addition, the vast majority of violence in the U.S. — an estimated 96% — is not attributable to mental illness. However, research indicates that during certain high-risk periods, small subgroups of individuals with serious mental illness are at increased risk of committing violence toward others.

Research shows that the same factors that increase risk of violence toward oneself and oth-
ers in the overall U.S. population — including substance abuse, childhood trauma and victimization, and unemployment — increase risk of violence among persons with mental illness. However, the prevalence of these factors, particularly substance abuse, is elevated among persons with mental illness. For example, a 2009 study using a national sample of Americans found that 46% of persons with schizophrenia had a lifetime history of a comorbid substance use disorder, compared with 15% of the overall U.S. population.

However, the prevalence of these factors, particularly substance abuse, is elevated among persons with mental illness. For example, a 2009 study using a national sample of Americans found that 46% of persons with schizophrenia had a lifetime history of a comorbid substance use disorder, compared with 15% of the overall U.S. population.

Some persons with serious mental illness are at particularly increased risk of committing violence toward others during two high-risk periods: untreated first-episode psychosis and the period surrounding psychiatric hospitalization. In a meta-analysis, Large and Nielsen concluded that 35% of individuals experiencing first-episode psychosis committed violence toward others, compared with about 3% of the general U.S. population without mental illness.

Rates of violence toward others range from 15%-20% among voluntary inpatients and from 21%-50% among involuntarily committed inpatients. Unlike the relationship between mental illness and violence toward others, there is a clear and direct link between mental illness and suicide. An estimated 47-74% of suicides are attributable to mental illness. Depression and bipolar disorder are the mental illnesses most strongly associated with suicide.

Federal Firearms Law and Mental Health Status

Although it remains difficult to predict future violence based on mental health status, federal firearm law is specific. Under the 1968 Gun Control Act, 18 U.S.C. §922(g)(4), persons who are “adjudicated mentally defective” or “committed to any mental institution” are prohibited from purchasing and possessing firearms. The Bureau of Alcohol, Tobacco and Firearms (ATF) later issued regulations specifying that persons involuntarily committed to inpatient psychiatric care, persons found incompetent to stand trial or acquitted because of mental illness, persons placed under legal conservatorship because of mental illness, and persons involuntarily committed to outpatient psychiatric care are prohibited from purchasing or possessing guns. Left unclear, however, is whether the restrictions apply to temporary emergency detentions. This is precisely the issue addressed by a recent federal appeals court decision.

By determining that 922(g)(4) should not be read to exclude handgun ownership for those individuals who have been subject to temporary, ex parte detentions, the Court in Rehlander essentially avoided having to squarely address the question of whether such a prohibition would, in fact, violate the Second Amendment under all circumstances. As a result, the Court did not have to wrestle with the epidemiological evidence for the relationship between certain mental health conditions and violence or suicide.

But this is an issue likely to come up again in future cases.

United States v. Rehlander

In March 2007, Nathan Rehlander was involuntarily hospitalized, based on “suicidal impulses,” under a Maine law allowing an emergency procedure for temporary hospitalization. That law permits hospitalization, under an ex parte procedure, without a hearing including full due process protections (such as counsel and a right to question evidence). In December 2008, police responding to an assault complaint found Mr. Rehlander with a handgun. He was indicted in 2009 for violating the federal law (§922(g)(4)).

In federal court, Rehlander argued that the indictment violated his Second Amendment rights. Specifically, he argued that a temporary hospitalization under an ex parte proceeding should not justify a permanent bar to his right to own a gun established by Heller. Some prior courts had concluded that a temporary detention did satisfy the requirements of §922(g)(4), but Rehlander argued that this was before Heller was decided in 2008.

The Second Circuit Court of Appeals agreed with Rehlander and dismissed his indictment. Although the Second Circuit acknowledged the language from Heller finding “longstanding prohibitions on the possession of firearms by...the mentally ill” to be presumptively lawful, the Court concluded that this did not apply to a temporary hospitalization. The Court emphasized the limited procedural protections in Maine for a
short-term emergency hospitalization compared with the substantial due process protections of a full-blown involuntary commitment. The Court also reasoned that “this would be a different case” if §922(g)(4) permitted only a temporary denial of the right to own a gun, or if the state of Maine had some meaningful process for Rehlander to demonstrate that he no longer posed a risk to himself or others and thereby regain his rights.22

Conclusion
By determining that 922(g)(4) should not be read to exclude handgun ownership for those individuals who have been subject to temporary, ex parte detentions, the Court in Rehlander essentially avoided having to squarely address the question of whether such a prohibition would, in fact, violate the Second Amendment under all circumstances. As a result, the Court did not have to wrestle with the epidemiological evidence for the relationship between certain mental health conditions and violence or suicide. But this is an issue likely to come up again in future cases.

In 2013, the Consortium for Risk-Based Firearm Policy released its report, Guns, Public Health, and Mental Illness: An Evidence Based Approach for State Policy. Among its recommendations, the Consortium wrote that: “Current state law should be strengthened to temporarily prohibit individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. Concurrently the process for restoration of firearm rights should be clarified and improved.”23

Enactment of this type of provision in a state would create a state analog to 922(g)(4), but make it clearly applicable to temporary commitments. Two important differences from the Rehlander case, however, would be the temporary nature of the prohibition and the possibility for rights to be restored. Whether these differences are sufficient to assure the constitutionality of the provision remains to be decided by future cases.

References
12. See Large and Nielssen, supra note 8; Swanson et al., supra note 7.
13. See Choe, supra note 8.
18. United States v. Chamberlain, 519 F. 3d 656 (1st Cir. 1998).
22. United States v. Rehlander, 666 F. 3d 45, 49 (1st Cir. 2012).

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