



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

May 9, 2007

Open Letter to the States' Attorneys General

We at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), like all Americans, were saddened by the tragic events that unfolded at Virginia Tech last month. In the immediate aftermath, many questions arose about whether the person responsible for the shootings was prohibited under Federal law from possessing a firearm, and how the shooter passed the background check required before purchasing the two firearms used on April 16, 2007.

As the Federal agency responsible for enforcing the Federal firearms laws, ATF works every day to prevent the criminal misuse of firearms. We stand ready to assist our State and local partners in better understanding the Federal prohibitions and how we can work together to prevent future tragedies. This letter serves to explain what ATF has done in response to the events at Virginia Tech and to provide information on the nature and scope of the Federal prohibition.

In the initial weeks after the Virginia Tech shootings, ATF took immediate steps to communicate with our State and local law enforcement partners and the licensed firearms community. In particular, ATF joined the Secretary of Health and Human Services, who, along with the United States Attorney General and the Secretary of Education, embarked on a twelve-State effort to meet with State and local leaders, educators, mental health experts, and law enforcement officials to find out what can be learned from the tragedy at Virginia Tech. A summary of lessons learned will be reported back to the President with recommendations about how the Federal Government, working in conjunction with State and local partners, can prevent such tragedies from happening in the future.

During the first week of May, ATF used the occasion of the annual FBI National Instant Criminal Background Check System (NICS) Users Conference in Portland, Oregon, to reach out to State law enforcement officials to clarify the meaning of the Federal prohibition for those persons adjudicated as a "mental defective" or committed to a mental institution. ATF has also begun the process of clarifying the Firearms Transaction Record (ATF Form 4473), the form that is completed whenever a person purchases a firearm from a federally licensed dealer. The new Form 4473 will make it clear, for example, that any person who has been found by a court, board, or other lawful authority to be a danger to self or others is prohibited from purchasing a firearm or ammunition. ATF will also be sending an open letter to all Federal firearms licensees to further instruct on the meaning of the Federal prohibition.

Many States are already taking steps to identify persons who are prohibited from possessing firearms as a result of their mental health history. However, as of April 2007, only 23 States have submitted any mental health information to the NICS system, and only four regularly report such information. ATF and our FBI partners who operate the NICS system are encouraging State authorities to take the necessary actions to ensure that all disqualifying information is provided to prevent the purchase of firearms by those prohibited from possessing firearms under Federal law. Accordingly, ATF stands ready to assist any State with questions or concerns they may have with respect to collecting additional information regarding whether a person is prohibited from possessing a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4). Many States are considering how to enhance their collection efforts in the aftermath of Virginia Tech, ATF would like to provide all necessary assistance with those efforts.

Section 922(g)(4) of 18 U.S.C. makes it unlawful for any person who has been adjudicated as a mental defective or who has been committed to a mental institution to possess firearms or ammunition. This prohibition covers two classes of persons—those who have either been (1) adjudicated as a mental defective; or (2) committed to a mental institution.

Each of these terms is defined by Federal regulation at 27 C.F.R. § 478.11 as follows:

Adjudicated as a Mental Defective

- 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 to others; or
 2. Lacks the mental capacity to contract or 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, 876b.

Committed to a Mental Institution

This term means 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 also includes a commitment for mental defectiveness or mental illness, and commitments for other reasons such as for drug use. The term does not include a person in a mental institution for observation or any voluntary admission to a mental institution.

ATF has historically interpreted these provisions as constituting two distinct prohibitions. Each prohibition represents a separate disqualification. For example, a “commitment” means a formal commitment, not a voluntary stay. Excluded are stays for observation only. Nor does the term include a stay in a mental institution that never involved any form of adjudication by a lawful authority. However, a stay that began as a voluntary stay may be subsequently transformed into a disqualifying stay if a court, board, or other lawful authority makes a determination that the person is a danger to self or others. Moreover, a

voluntary stay that is by itself not disabling could be later converted into a formal commitment and therefore be disabling.

For purposes of a Federal firearms disability, ATF interprets "adjudicated mental defective" to include anyone adjudicated to be a "danger to him or herself," "a danger to others," or lacking "the mental capacity to contract or manage their own affairs." For purposes of Federal law, "danger" means any danger, not simply "imminent" or "substantial" danger as is often required to sustain an involuntary commitment under State law. Thus, for example, adjudication that a person was mentally ill and a danger to himself or others would result in Federal firearms disability, whether the court-ordered treatment was on an inpatient or outpatient basis. This is because the adjudication itself (a finding of danger due to mental illness) is sufficient to trigger the disability.

It should be emphasized that whatever adjudication procedure a State employs, the Constitution requires certain guarantees of due process. In order for a particular commitment order to qualify as a prohibiting commitment, ATF historically has required that traditional protections of due process be present, including adequate notice, an opportunity to respond, and a right to counsel. Such protections are important because whether a person has been adjudicated a mental defective or committed to a mental institution, the firearms disability is permanent.

We recognize that the procedures that result in a person being prohibited vary widely under State law and we encourage each of you to work closely with ATF to determine whether your statutory or regulatory mental health commitment or adjudication procedures under a particular set of facts might result in a determination that qualifies as a Federal prohibition.

We appreciate the interest that Federal, State, and local law enforcement and other stakeholders have in improving the enforcement of our nation's firearms laws, and ATF stands ready to assist the States in improving their efforts to ensure information on disqualified persons is collected and provided to the NICS system. Questions or concerns about any of these issues may be directed to your local ATF field office.

A handwritten signature in black ink, appearing to read 'MJS', with a long horizontal line extending to the right.

Michael J. Sullivan
Acting Director