LRB-1086

2001 DRAFTING REQUEST

Bill

Received: **11/17/2000**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing: **Mike**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies: **rlr**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Licenses to carry a concealed weapon

Instructions:

Redraft 1999 AB 605

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida 02/23/2001	jdyer 03/15/2001		_____ _____			S&L
/P1		jdyer 10/24/2001	pgreensl 03/16/2001	_____ _____	lrb_docadmin 03/16/2001		S&L
/P2		jdyer	kfollet	_____	lrb_docadmin		S&L

LRB-1086

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		11/14/2001	10/24/2001	_____	10/24/2001		
/1		jdyer 11/15/2001	jfrantze 11/14/2001	_____ _____	lrb_docadmin 11/14/2001		S&L
/2			pgreensl 11/15/2001	_____ _____	lrb_docadmin 11/15/2001	lrb_docadmin 11/15/2001	

FE Sent For:

At intro

<END>

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for Assembly

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/P2		jdyer	kfollet		lrb_docadmin		S&L

/2 11/15 jld 11/15 kf

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
		11/14/2001	10/24/2001	_____	10/24/2001		
/1			jfrantze	_____	lrb_docadmin		
			11/14/2001	_____	11/14/2001		

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/P2		11/14 jld	kfollet	_____	lrb_docadmin		S&L

11/14 11/14

LRB-1086

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
			10/24/2001	_____	10/24/2001		

FE Sent For:

<END>

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Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies: **rlr**

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No specific pre topic given

Topic:

Licenses to carry a concealed weapon

Instructions:

Redraft 1999 AB 605

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida 02/23/2001	jdyer 03/15/2001					S&L
/P1		/P2 10/24 jld	pgreensl 03/16/2001		lrb_docadmin 03/16/2001		S&L

FE Sent For:

10/24 <END> 10/24

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May Contact:

Alt. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies: **rlr**

Pre Topic:

No specific pre topic given

Topic:

Licenses to carry a concealed weapon

Instructions:

Redraft 1999 AB 605

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida 02/23/2001	lrb_editor 3/15 pl 3/15 jld	3/15 pg	3/16 ~~ps~~ jf			

FE Sent For:

<END>

Mtg ✓

1) Include general ineligibility under fed'l law ATF website

2) Only applies to ~~barg~~ transport ; not discharge

3) Dishon. discharg. ⇒ ineligib. ? 2/9 – Mike is still checking

Merge 6+7

4) Change may to shall
Move to elig.

5) Don will check

6) Same restrictions for sheriff
Also see 19.1[1] – 8 – make applicable to sheriff

Add penalty for false stmts on application
AB664 – straw purchases penalty ~~C~~
Use 9 mos + 500 – 10000

Add to (c) – ~~2~~ To investigate accuracy of stmts made in application

7) Allow license before performy ✓

Relinquish license in if background ✓ ⊕

8) Move all elig stuff (incl. commitment) to sub (3) Some of that " + crime will be kept copied here

Change to revocation ; delete suspension

Scott Gunderson

STATE REPRESENTATIVE • 83RD DISTRICT

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P.O. Box 8952
Madison, WI 53708
(608) 266-3363

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Waterford, WI
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(414) 895-6254

Mike,

Here is the memo From Don Dyke that we discussed.

Thanks,

Mike Bard

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: June 1, 2000

18 USC 922 (g)

TO: REPRESENTATIVE SCOTT GUNDERSON

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Possible Clarifications to 1999 Assembly Bill 605, Relating to Licenses to Carry a Concealed Weapon

This memorandum is in response to your request for a review of 1999 Assembly Bill 605 to determine whether any provisions of the bill may be in need of clarification.

Summarized below are aspects of the bill that may be in need of clarification, based on my review of the bill and comment on the bill from the two public hearings held on the bill by the Assembly Committee on Judiciary and Personal Privacy.

1. The relationship of the bill to federal law relating to possession of firearms is unclear. The bill does require an applicant for a concealed weapon license to provide a fingerprint and requires the sheriff to submit the fingerprint to the Department of Justice (DOJ). DOJ is required to submit the fingerprint to the Federal Bureau of Investigation (FBI) or the automated fingerprint identification system for the purpose of verifying the applicant's identity and obtaining records of his or her criminal arrest and conviction. However, the bill does not directly indicate that a person who is prohibited from possessing a firearm under federal law is ineligible for a license under the bill. Further, some of the eligibility and disqualification criteria under the bill appear inconsistent with federal law on possession of firearms. For example, an eligibility criterion under the bill is that the applicant be a resident of the United States. However, federal law prohibits a resident of the United States who is an illegal alien from possessing a firearm. [18 U.S.C. s. 922 (d) (5).]

9/8

2. Is the exemption on page 5, lines 20 to 21 too broad? For example, s. 167.31 (2) and (3), Stats., addresses not only the possession and transport of firearms but also the discharge of firearms.

3. There appears to be overlap and redundancy between the training criteria set forth on page 10, lines 23 to 25, of the draft and the criteria on page 11, lines 1 to 5. In other words, if

an applicant satisfies the page 10 criterion of military training giving the applicant experience with firearms that the sheriff determines is substantially equivalent to any course or class specified previously in the bill, then that person will have already met the page 11 criterion of participation in military firearms training whether or not the applicant is serving in the U.S. Armed Forces or has received a discharge from the Armed Forces under conditions other than dishonorable.

4. Is the use of "may" on page 11, line 22, intended? Further, why is the reason for denial of a license that is included in sub. (4), which begins on page 11, line 22, not included in the list of eligibility criteria that is set forth in the preceding subsection of the bill? B/c

5. Page 12, line 14, of the bill provides that the application form for a license to carry a concealed weapon include the applicant's Social Security number. Proponents of Assembly Bill 605 may wish to review federal law to determine whether providing Social Security numbers on the application may be made mandatory or voluntary only.

6. Should a limitation be provided on public access to records that the sheriff is required to maintain on page 16, lines 15 to 18? Compare the access limitations to records maintained by the DOJ under the bill. [See page 16, line 22, and page 18, lines 22 to 24, generally.]

7. On page 17, lines 24 to 25, an emergency license is valid for a period of five years if, among other things, a background check does not indicate that the person fails to meet specified qualifications for a license to carry a concealed weapon. The reference to a background check in this context is not clear; presumably, a background check was already performed as a condition of receiving the emergency license (page 17, lines 15 to 17). Or, is the intent that the 120-day emergency license may be issued before the results of the background check are received? If so, must the emergency license be surrendered if the background check shows the person unqualified?

8. Page 19, lines 18 to 25, and page 20, lines 1 to 12, may need clarification in at least two respects. First, it is not clear why the items listed in subds. 3. through 9. are not included in the eligibility criteria listed in sub. (3) of the bill. Second, reference is made to suspension ***or*** revocation of a license by a sheriff but no criteria are included for distinguishing between the two types of actions. Ordinarily, suspension is for a specified period of time and contemplates reinstatement; revocation implies some permanency and reapplication if it is possible to again become licensed after revocation. [See, for example, page 20, lines 13 to 17.]

9. The provision on page 20, lines 18 to 21, should, again, arguably be placed in the eligibility criteria of sub. (3). How is the sheriff to be notified of such an arrest or charge? More generally, how does the sheriff obtain information that disqualifies a licensee from maintaining a license after the license has been issued but before renewal of the license.

10. Page 22, line 12, makes reference to a license renewal form. There is no provision in the bill for DOJ designing the renewal application form. Is the sheriff responsible for the form?

11. Page 25, lines 20 to 23, exempt persons licensed under the bill and persons licensed to carry a concealed weapon in another state from the criminal prohibition against carrying a concealed and dangerous weapon. Is it clear that a person licensed to carry a concealed weapon in another state is subject to the provisions of sub. (16) relating to where a licensee may not carry a concealed weapon or to the provisions of sub. (2g) regarding carrying and display of a license to carry a concealed weapon? The latter provisions reference Wisconsin licensees and not licensees from other states.

Please contact me directly at the Legislative Council Staff offices if you have any questions regarding this memorandum.

DD:ksm:rv;tlu

Include reapply for revocation
+ denial of application

Check fed'l law ff. to see if there are any ~~from~~ commitment restrictions that have (for possession + time limits) greater than what this bill provides

9) Move 20/18-21 to sub (3)

? did I do this?

11/20 "unless circumstances have changed to render the person elig. for licensure"

10) Make DOJ responsible

11) Add to 23/11 "or person licensed in another state"

25/21 Changed ~~to~~ "licensed" to "authorized"

7/18 Rq. them to carry ~~a~~ product ~~document~~ which authorizes

"evidence of authorization, incl. license"

✓ 23/14-17 w/ 1997 AB 144 (Act 158)

Dsida, Michael

From: Dsida, Michael
Sent: Saturday, January 27, 2001 4:02 PM
To: Bruhn, Mike
Cc: Dyke, Don
Subject: Concealed carry bill

Here are some additional questions I have about the draft:

1. Under s. 175.50 (3), the bill disqualifies someone from getting a license if the person was convicted of a misdemeanor crime of violence, unless the person completed the sentence imposed for that crime more than 3 years before the date on which he or she applied for the license. In addition, a person is ineligible if convicted of a violation of ch. 961 in the three years preceding an application. But unlike the provisions relating to felonies (which come into play via s. 941.29), the misdemeanor and ch. 961 provisions do not refer to a delinquency adjudication or a finding that the person was not guilty by reason of mental disease or defect (an NGI case). The provisions calling for revoking a license upon conviction present the same problem. Do you want to have delinquency adjudications and NGI cases treated in the same way as convictions? Treat same way

2. Under s. 175.50 (14) (a) 6., the sheriff must revoke a person's license if the person is involuntarily committed under s. 51.20, but under s. 175.50 (3) (e), only commitments based on drug dependency preclude a person from obtaining a license. Do you want to cover other types of commitments under s. 51.20 (such as commitments based on mental illness ~~or dangerousness~~) in s. 175.50 (3) (e)? Yes - Already covered in (k)

3. Is it okay if the license renewal form requires the same information as the application form does under sub. (5)? (See item 10 in Don's memo.) Also, do you want DOJ to design the notice of expiration mentioned in sub. (15) (b) (intro.)? Yes Yes

4. What should happen if the DOJ's review of an a ~~duplicate~~ form under sub. (9g) (e) 1. b. indicates ~~that~~ the applicant is not qualified for a license? Do you want DOJ to notify the sheriff and have the sheriff revoke the license? Have DOJ send sheriff notice

5. A person who obtains an emergency license under sub. (9r) does not need to submit an application or a fingerprint. Thus, a person who gets an emergency license may ultimately acquire a 5-year license by using someone else's name. (And since renewals don't require fingerprints, they would never have to submit a fingerprint.) If this is not your intent, I can draft language to require that the person not only satisfy the firearm training or firearm safety course requirement, but also fulfill other requirements that he or she would be subject to if applying for a license for the first time. Alternatively, I could make the extension of the emergency license more like a renewal. (If you choose the latter approach, keep in mind that there is no fingerprint requirement for renewals.) add fingerprint to (9r)(b)

6. If the background check for a person who was issued an emergency license indicates that the person is ineligible for a license, or if a person's license is revoked, do you want to require the person to relinquish the license within a certain period of time? For example, you could require the sheriff to notify the person of the revocation or ineligibility and require relinquishment within a specified number of days thereafter. If you want such a requirement, do you want a penalty for a person who fails to relinquish the license on time? Immed. Notify (in person) / or certified mail

7. In response to item 8 in Don's memo, I am trying to move all of the criteria for ineligibility (such as those listed in sub. (14) (a)) into sub. (3). I can do so, but only if I eliminate the "immediately preceding the date on which he or she submits an application" language that appears in several places in that subsection. The three- and five-year windows will still be part of those criteria, but they won't be linked to the application date. Instead, a person's eligibility under these criteria will be assessed looking back from the date of the assessment. Assuming that makes sense, is that okay?
2 x years from date of issuance

8. In our meeting, we did not address the question of how the sheriff is to learn of any of the circumstances under which he or she must revoke or suspend a license under sub. (14). A sheriff may be able to learn of pending criminal cases and their disposition through circuit court or DOJ databases; but if the burden is on the sheriff to learn of these developments, he or she may never do so unless the bill requires periodic checks on all licensees. I am also unsure of whether the circuit court would have reliable information available to a sheriff regarding commitments under ch. 51 or 880. (I have asked Bob Nelson, the lawyer in our office who drafts legislation regarding the courts, for information on that issue.)

I can think of two ways to avoid these problems, but each potential solution poses other problems. First, you may want to rely on the licensee to tell the sheriff that he or she should have the license revoked or suspended because one of the listed events has occurred. The problems with that approach are pretty obvious. Second, you may want to have the courts tell sheriffs whenever they have a case that would lead to a license suspension or revocation. Aside from the

give clerks access to records

burden that it would impose on courts, that approach would require the courts to be notified of the who has a license. Otherwise, the courts would have to tell the sheriff about every felony case, every ch. 51 or 880 commitment case, every case under s. 346.63... on the off-chance that the defendant or respondent in the case has a license.

Any thoughts about how you want to handle this issue?

9. If a person whose license is suspended under s. 175.50 (14) (am) is released but not charged, is the suspension automatically lifted? Do you want to omit the reference to arrests altogether? After all, once the person is in police custody, he or she will not be carrying a weapon. On the other hand, a person may be arrested and released but still be charged later.

Yes

10. Under s. 175.50 (14) (am), the sheriff must restore a license if a criminal case that requires suspension of a license is dismissed. But in some instances, a case is dismissed after a person is found incompetent to stand trial under s. 971.14 but without the person being committed (or at least before the person is committed) under ch. 51 or 55. I assume that you do not want those individuals to be eligible for a license. Therefore, assuming it's okay with you, I will add a provision to subs. (3) and (14) making a person ineligible if he or she has been determined incompetent under s. 971.14. But do you want to limit those provisions to cases in which a person is charged with an offense that would make the person ineligible for a license if he or she were convicted? Also, do you want those incompetency determinations to count only if they have occurred within the last three years?

treat incompency as NGI

11. Based on our belief that the bill did not contain any penalties for making false statements on an application, you decided that we should include in the bill a penalty for a person who does so that would be comparable to the penalty in 1999 AB 664, last session's straw purchase bill. Those penalties were a fine of at least $500 but not more than $10,000 and up to ~~9 months~~ imprisonment. But penalties are already provided by virtue of the oath requirement under s. 175.50 (6). As a result of that provision, intentionally making a false statement on the application is punishable, as a Class D felony, by a fine of up to $10,000 (but with no minimum fine) and a term of imprisonment of up to 10 years (with a maximum term of confinement of 5 years). Do you want to simply keep the penalties as they are? Keep them but add a provision mandating a minimum fine of $500?

5 yrs

Feel free to respond to these questions piecemeal. In addition, if you would like to meet to discuss any of them, please let me know.

Mike Dsida
Legislative Attorney
michael.dsida@legis.state.wi.us
266-9867

Same as current gun form penalty

Dave
2-6881

Did straw buyers create an exception in statute prohibiting making false statt?? AB 664

No

HR 492 IH

106th CONGRESS

1st Session

H. R. 492

To amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry certain concealed firearms in the State, and to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

IN THE HOUSE OF REPRESENTATIVES

February 2, 1999

Mr. STEARNS (for himself, Mr. SMITH of Washington, Mr. HALL of Texas, Mr. BACHUS, Mr. HOLDEN, Mr. NETHERCUTT, Mr. YOUNG of Alaska, Mrs. EMERSON, Mr. HOSTETTLER, Mr. GREEN of Texas, Mr. CRAMER, Mr. COMBEST, Mr. RAHALL, and Mr. BARCIA) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry certain concealed firearms in the State, and to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL STANDARD FOR THE CARRYING OF CERTAIN CONCEALED FIREARMS BY NONRESIDENTS.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

'Sec. 926B. National standard for the carrying of certain concealed firearms by nonresidents

'(a) Notwithstanding any provision of the law of any State or political subdivision thereof, a person who is not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm and is carrying a valid license or permit which is issued by a State and which permits the person to carry a concealed firearm (other than a machinegun or destructive device) may carry in another State a concealed firearm (other than a machinegun or destructive device) that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

'(b)(1) If such other State issues licenses or permits to carry concealed firearms, the person may carry a concealed firearm in the State under the same restrictions which apply to the carrying of a concealed firearm by a person to whom the State has issued such a license or permit.

'(2) If such other State does not issue licenses or permits to carry concealed firearms, the person may not, in the State, carry a concealed firearm in a police station, in a public detention facility, in a courthouse, in a public polling place, at a meeting of a State, county, or municipal governing body, in a school, at a professional or school athletic event not related to firearms, in a portion of an establishment licensed by the State to dispense alcoholic beverages for consumption on the premises, or inside the sterile or passenger area of an airport, except to the extent expressly permitted by State law.'.

(b) CLERICAL AMENDMENT- The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

'926B. National standard for the carrying of certain concealed firearms by nonresidents.'.

SEC. 2. EXEMPTION OF QUALIFIED CURRENT AND FORMER LAW ENFORCEMENT OFFICERS FROM

STATE LAWS PROHIBITING THE CARRYING OF CONCEALED HANDGUNS.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by section 1(a) of this Act, the following:

'Sec. 926C. Carrying of concealed handguns by qualified current and former law enforcement officers

'(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer or a qualified former law enforcement officer and who is carrying appropriate written identification of such status may carry a concealed handgun.

'(b) As used in this section:

'(1) The term 'qualified law enforcement officer' means an officer, agent, or employee of a public agency who--

'(A) is a law enforcement officer;

'(B) is authorized by the agency to carry a firearm in the course of duty;

'(C) is not the subject of any disciplinary action by the agency; and

'(D) meets such requirements as have been established by the agency with respect to firearms.

'(2) The term 'qualified former law enforcement officer' means an individual who--

'(A) retired from service with a public agency as a law enforcement officer, other than for reasons of mental disability;

'(B) immediately before such retirement, was a qualified law enforcement officer;

'(C) has a nonforfeitable right to benefits under the retirement plan of the agency;

'(D) meets such requirements as have been established by the State in which the individual resides with respect to training in the use of firearms; and

'(E) is not prohibited by Federal law from receiving a firearm.

'(3) The term 'law enforcement officer' means an individual authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and includes corrections, probation, parole, and judicial officers.

'(4) The term 'appropriate written identification' means, with respect to an individual, a document which--

'(A) was issued to the individual by the public agency with which the individual serves or served as a law enforcement officer; and

'(B) identifies the holder of the document as a current or former officer, agent, or employee of the agency.'.

(b) CLERICAL AMENDMENT- The table of sections for such chapter is amended by inserting after the item added by section 1 (b) of this Act the following:

'926C. Carrying of concealed handguns by qualified current and former law enforcement officers.'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

LEVEL 1 - GROUP 1 - 5 OF 9 CASES

UNITED STATES of America, Appellee, v. Clarence Carfield Daniel BUFFALOE, Appellant
No. 71-1309
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
449 F.2d 779; 1971 U.S. App. LEXIS 7637

October 12, 1971

DISPOSITION: [**1]

Affirmed.

CORE TERMS: adjudicated, mental institution, mental defective, firearms, discharged

JUDGES: Haynsworth, Chief Judge, and Butzner and Russell, Circuit Judges.

OPINIONBY: PER CURIAM

OPINION: [*780] Clarence Carfield Daniel Buffaloe appeals his conviction for violation of 18 U.S.C. § 922 by making a false statement in connection with the purchase of firearms. Buffaloe, on two occasions, purchased pistols stating that he had never been adjudicated a mental defective or committed to a mental institution.

The government's proof established that Buffaloe had been tried in the Circuit Court of Dinwiddie County, Virginia, for maiming, found not guilty by reason of insanity, and "committed to Central State Hospital as a criminally insane person." Approximately 16 months later, he was discharged from the hospital as not then insane or feebleminded.

We agree with the district judge that Buffaloe was adjudicated and committed within the meaning of 18 U.S.C. § 922 (d) (4), which prohibits the sale of firearms to a person who "has been adjudicated a mental defective or has been committed to any mental institution."

We also conclude that the statute is not unconstitutional as to Buffaloe because 16 months later he[**2] was discharged from the hospital. Finally, there is ample evidence to support the finding that Buffaloe willfully and knowingly made the false statements.

Deeming oral argument unnecessary, we affirm the judgment of the district court.

Affirmed.

Cite as Galioto v. Department of Treasury, 602 F.Supp. 682 (D.N.J. 1985)

Anthony J. Galioto, Plaintiff,

v.

The Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Defendant.

Vacated + remanded
106 SCt
2686

No. Civ. A. 84-2045.

United States District Court, D. New Jersey.

Feb. 7, 1985.

Bianchi & Casale by Michael A. Casale, Nutley, N.J., for plaintiff.

W. Hunt Dumont, U.S. Atty. by Peter R. Ginsberg, Asst. U.S. Atty., Newark, N.J., for defendant.

OPINION

SAROKIN, District Judge.

INTRODUCTION

In a society which persists and insists in permitting its citizens to own and possess weapons, it becomes necessary to determine who may and who may not acquire them. At issue in this matter is a statute reminiscent of the Dark Ages, which permits a person convicted of a crime to purchase a gun under certain circumstances, but denies that same right to a person once committed for mental illness no matter what the circumstances. Apparently one who has been convicted of a crime can be relieved of the stigma arising from such a conviction, but a commitment for mental illness renders one permanently disqualified. The statute thus implies that mental illness is incurable, and that those persons with a history of mental illness who have never committed a crime are deemed more likely to commit one in the future than those persons who have actually done so in the past. If persons with criminal records are permitted to purchase and possess weapons after meeting certain standards, certainly persons who have conquered past mental illness are entitled to the same consideration and rights. To impose a perpetual and permanent ban against anyone who has ever been committed for mental illness, no matter how ancient the commitment or how complete the cure. is to elevate superstition over science and unsupported fear over equal protection, and due process. Accordingly, the court finds this provision of the subject statute to be unconstitutional.

The instant motion has been brought by defendant to dismiss plaintiff's complaint or, in the alterative, for summary judgment. A party moving for summary judgment cannot prevail unless there exists no genuine issue of material fact and the party is entitled to judgment as a matter of law. Sunshine Books, Ltd. v. Temple University, 697 F.2d 90, 95 (3d Cir. 1982). When the court has determined upon undisputed facts that the non-moving party, rather than the movant, is entitled to judgment as a matter of law, "it is

well within the district court's discretion to enter summary judgment for the non-moving party." Selected Risks Ins. Co. v. Bruno, 555 F.Supp. 590 (M.D.Pa. 1982) rev'd on other grounds, 718 F.2d 67 (3d Cir. 1983); see also 6 Moore's Federal Practice, n 56. 12 (2d ed. 1984). Such is the case here. The defendant Bureau of Alcohol, Tobacco, and Firearms (Bureau), asks the court to grant summary judgment in its favor on the grounds that the plaintiff has no entitlement to relief under 18 U.S.C. section 925(c), pursuant to which the plaintiff sues. Instead, the court finds that section 925(c) and the related statutory provisions in 18 U.S.C. section 921 et seq, are invalid as infringements upon the plaintiffs right to due process as guaranteed by the fifth amendment to the United States Constitution.

FACTS

Plaintiff Anthony Galioto is a 57-year-old longstanding resident of West Orange, New Jersey. Galioto, served in the Armed Forces from 1951 to 1953, was honorably discharged, and has since held a position as an engineer with the New York and New Jersey Port Authority. Plaintiffs Memorandum of Law, Exh. D. In 1971, having had no prior history of mental illness, Galioto suffered an acute mental breakdown and voluntarily entered Fair Oaks Hospital in Summit, New Jersey. Plaintiff's Mem., Exh. B. He was diagnosed as having suffered an acute schizophrenic episode with paranoid features. Galioto remained hospitalized for twenty-three days from May 11 to June 4, 1971.

During Galioto's hospital stay, when Galioto expressed his intention to leave, his physician, Dr. R.G. Alvarez, sought to have him committed. On May 31, 1971, the Essex County Juvenile and Domestic Relations Court entered a final order of commitment. Galioto was released five days later, after Dr. Alvarez determined that Galioto's condition had improved. There is no evidence that Galioto was ever again hospitalized for mental illness.

Ten years after this hospitalization, Galioto applied to the Superior Court of New Jersey, Essex County, Law Division, for an order granting him a firearms purchase identification card pursuant to New Jersey Statute Annotated 2C:58-3(b), which order was granted on April 27, 1981. Thereafter, in October, 1982, plaintiff attempted to purchase a firearm at Ray's Sport Shop in North Plainfield, New Jersey. Ray's Sport Shop refused to sell any firearm to plaintiff when he responded "yes" to a question on a standard Bureau questionnaire asking: "Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?" 18 U.S.C. section 922(d)(4) makes it unlawful for a licensed dealer in firearms "to sell ... any firearm ... 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." [footnote 1]

A few days after said refusal, Galioto applied to the defendant Bureau in Washington, D.C., for a release from firearms disability pursuant to 18 U.S.C. section 925(c). Papers submitted by plaintiff included a certification from Dr. Alvarez, the physician who had sought Galioto's commitment in 1971, to the effect that Galioto was no longer suffering from any mental disability that would interfere with his handling of firearms. Section 925(c), under which Galioto sought relief from his firearm

disability, provides in pertinent part:

> A person who has been convicted of a crime punishable for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition ... of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding such conviction, 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. [footnote 2]

There is no equivalent provision establishing a mechanism by which a former mental patient can seek relief from the firearms disabilities imposed upon him by federal law. By letter dated April 13, 1984, the Director of the Bureau of Alcohol, Tobacco, and Firearms, Stephen E. Higgins, denied plaintiff's application for relief from firearms disability, asserting that Galioto was "subject to Federal firearms disability because of his commitment." Exhibit A to Complaint.

The Bureau argues in support of its motion that it was powerless to release Galioto from disability under section 925(c), because that section allows for a release from disability only for those disabled due to criminal convictions, not those disabled as a result of past commitment to a mental institution. Sections 922(d)(4) and (h)(4), according to the Bureau, create a permanent and irreversible disability for anyone ever committed to a mental institution, without regard to the length of the commitment, the length of the interval between the commitment and the proposed firearms purchase, the source or severity of the original illness, the improvement of the person subject to the disability, the evolution of medical knowledge about the illness for which the former patient was committed, or the propriety and correctness of the commitment in the first instance. [footnote 3]

DISCUSSION

I. Issues of Fact

Plaintiff has contended, in defense of this motion, that there remains a disputed issue of fact which ought to preclude summary judgment. He argues that the Director's decision to deny plaintiff relief rested on two factual determinations: "(1) that plaintiff had been committed to a mental institution and (2) that plaintiff was discharged on a determination other than a finding that he was competent." Plaintiff's Mem. at 3; also Exh. A to Complaint. Plaintiff argues that the Director would or should have released plaintiff from his disability had he found that plaintiff's commitment was "factually erroneous," that is, that plaintiff "was not mentally ill at the time of his commitment or alternatively that he was subsequently discharged based on a finding of mental competence." Plaintiff's Mem. at 5. Plaintiff does not argue that his commitment was, in fact, "erroneous," but notes that it was of short duration. The Bureau maintains, on the other hand, that the fact of plaintiff's commitment alone is enough to disable him

permanently, whether or not that commitment was erroneous. It notes in any event that plaintiff was prescribed medication upon his discharge, indicating that he was not wholly "competent" at that time.

The court finds no issue of fact raised here that should preclude summary judgment in favor of the plaintiff. The Bureau has taken the position that it is powerless under sections 922 and 925 to release plaintiff from his disability even if it were shown as a matter of fact that plaintiff's commitment was indeed erroneous, or for any other reason. This interpretation is entitled to some, albeit limited, deference as an indication of the intended "meaning" of the statute. Columbia Gas Transmission Corp. v. F.P.C., 530 F.2d 1056, 1059 (D.C.Cir. 1976) (deference given to agency's determination of meaning of statute in light of agency expertise); Erickson Air Crane Co. of Washington, Inc. v. United States, 731 F.2d 810, 814 (Fed.Cir. 1984) ("legal interpretations by tribunals having expertise are helpful [to reviewing court]"). Moreover, the Bureau presents a plausible argument that the statute is to be read literally, relying on Dickerson v. New Banner Institute, 460 U.S. 103, 103 S.Ct 986, 74 L.Ed.2d 845 (1983) (state expunction of conviction did not relieve plaintiff of firearms disability under literal terms of 18 U.S.C. sections 921 et seq., imposing disability based on fact of conviction), and that section 925 simply does not give it authority to relieve plaintiff of his disability, whatever the circumstances surrounding his commitment or thereafter. In general, a court should avoid reaching a constitutional question when an issue can be resolved as a matter of statutory interpretation. See, e.g., United States v. Security Industrial Bank, 459 U.S. 70, 103 S.Ct. 407, 411, 74 L.Ed.2d 235 (1982); Railroad Comm'n v. Pullman, 312 U.S. 496, 61 S.Ct 643, 85 L.Ed. 971 (1941). Here, however, where the statutory interpretation of the agency is well-founded and where the plaintiff has not submitted evidence to demonstrate that he comes within the exception to the statute which he urges, it is not necessary to prolong these proceedings in anticipation of further proofs in order to avoid confronting the patent constitutional defect in section 921, et seq. The purpose of summary judgment is "to eliminate a trial in cases in which it is unnecessary and would only cause delay and expense." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert, denied, 429 U.S. 1038, 97 S.Ct 732, 50 L.Ed.2d 748 (1977).

2. Issues of Law-The Statute's Infirmity Under the Fifth Amendment

It is well settled that the due process clause of the fifth amendment includes an equal protection component. See, e.g., Nat'l Black Police Ass'n, Inc. v. Velde, 712 F.2d 569, 580 (D.C.Cir. 1983), cert. denied, -- U.S. --, 104 S.Ct. 2180, 80 L.Ed.2d 562 (1984). Federal government action violates the equal protection component of the due process clause when it treats similarly situated groups differently without a substantial or compelling government interest, if the groups are suspect or "quasi-suspect" classes entitled to enhanced scrutiny, or a fundamental right is involved, or if it acts without a rational basis, where the groups are not suspect classes and no fundamental right is implicated. Plyler v. Doe, 457 U.S. 202, 216-18, 102 S.Ct 2382, 2394-95, 72 L.Ed.2d 786 (1982). A legislative classification is treated as "suspect" when it is

> more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective. Legislation predicated on such prejudice is easily recognized as incompatible with the constitutional understanding that each person is to be judged individually and is entitled to equal justice under the law.

Id. at 216-17 n. 14, 102 S.Ct at 2394 n. 14. Certain groups, although not "suspect," are deserving of a higher level of scrutiny than is accorded most legislative classifications. Differential treatment of these groups must be justified by a "substantial" state interest, because the groups have been historically "subjected to unique disabilities on the basis of stereotyped characteristics not truly corresponding to the at tributes of [their] members." J. W. v. City of Tacoma, Wash., 720 F.2d 1126, 1129 (9th Cir. 1983). The Supreme Court has extended such enhanced scrutiny thus far to classifications by sex, Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976), by legitimacy of birth, Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978), and by lawfulness of presence within the United States, Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). See also United States v. Cohen, 733 F.2d 128 (D.C.Cir. 1984).

This court concludes that persons with histories of mental illness are a quasi-suspect class deserving of intensified "intermediate" scrutiny; that is, any statute treating them differentially must be related to a "substantial" governmental interest. Even if persons with histories of mental illness are not a quasi-suspect class deserving of heightened scrutiny, the provisions of 18 U.S.C. section 921 et seg. are simply not rational to the extent that they treat former mental patients differently vis a vis convicted criminals, in that they permanently deprive former mental patients of the opportunity to demonstrate changed circumstances which warrant the removal of the disqualification. The court determines that they violate not only plaintiff's right to equal protection, but his right to substantive due process as well.

A. Former Mental Patients as a Quasi-Suspect Class

The Supreme Court has expressly reserved judgment on the question of whether or not the mentally ill are deserving of heightened scrutiny. Schweiker v. Wilson, 450 U.S. 221, 229, 231 n. 13, 101 S.Ct. 1074, 1080, 1081 n. 13, 67 L.Ed.2d 186 (1981). [footnote 4] The Ninth Circuit has found former mental patients to be a "quasi-suspect" class entitled to "intermediate" scrutiny, however. J. W. v. City of Tacoma, 720 F.2d 1126 (9th Cir. 1983). In City of Tacoma, the Ninth Circuit recognized that "constitutional concerns are heightened by any classification scheme singling out former mental patients for differential treatment because of the possibility that the scheme will implement "inaccurate and stereotypic fears" about former mental patients. Id. at 1130-31.

The Third Circuit has not spoken directly on this issue. In its recent decision, Cospito v. Heckler, 742 F.2d 72 (3d Cir. 1984), the court applied a "rational basis" test in analyzing the claims of a group of mental patients who had lost certain federal benefits when the psychiatric hospital in which they were being treated lost its accreditation. The patients contended that

"psychiatric hospitals will lose federal benefits more readily than a general hospital if deaccredited by JCAH [an accrediting agency], since such accreditation apparently does not affect in any way a general hospital's participation in Medicare or Medicaid . . . whereas a psychiatric hospital must either be JCAH accredited, or else certified under the 'distinct part' survey in order to qualify," and that this amounted to discrimination against the mentally ill. Id at 83. In applying only minimal scrutiny, the Third Circuit carefully noted the Supreme Court's reservation of "the question of whether legislation expressly classifying mental patients as a discrete group must be examined under any enhanced standard of scrutiny," Id. n. 19 (emphasis supplied), however. This court concludes from this note that the Third Circuit, like the Supreme Court, has reserved judgment on the question of what level of scrutiny to apply to legislation that explicitly singles out mental patients or those with a history of psychiatric hospitalizations for differential treatment. In the opinion of this court, the Third Circuit would not automatically apply a rational basis test if presented with these facts, particularly in light of the Ninth Circuit's holding in Tacoma, supra (striking down zoning regulation that treated group homes for former mental patients differently than other group homes). [footnote 5] This court is persuaded by the Ninth Circuit's holding that former mental patients do constitute a quasi-suspect class for fourteenth amendment purposes, but the court does not rest its decision on that ground.

B. Application of the Rational Basis Test

The question of whether or not persons with a history of mental illness should be afforded enhanced scrutiny when singled out for differential treatment is not critical in this constitutional challenge to 18 U.S.C. section 921 et seq., because, even under a rational basis test, this statute is defective under both equal protection and substantive due process theories. [footnote 6]

The court first notes its agreement with plaintiff's observation that the Supreme Court has not already decided this question in the dicta from Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 103 S.Ct 986, 74 L.Ed.2d 845 (1983), which is emphasized by defendant. In that case, holding that a state court's expunction of a criminal conviction would not automatically release a convict of his firearm disability under 18 U.S.C. section 921 et seq., the Court stated that

> [t]he imposition, by sections 922(g)(4) and (h)(4), of continuing disability on a person who "has been" adjudicated a mental defective or committed to a mental institution is particularly instructive. A person adjudicated as a mental defective may later be adjudged competent, and a person committed to a mental institution may later be deemed cured and released. Yet Congress made no exception for subsequent curative events. The past adjudication or commitment disqualifies. Congress obviously felt that such a person, though unfortunate, was too much of a risk to be allowed firearms privileges.... In the face of this fact, we cannot believe that Congress intended to have a person convicted of a firearms felony under state law become eligible for firearms automatically because of a state expunction for whatever

reason.

Id. 103 S.Ct. at 993. in this passage, the Court referred to section 922's explicit treatment of persons with histories of psychiatric commitments simply in order to support its statutory interpretation of the import of an expunction under section 921 et seq. Possible constitutional infirmities in collateral clauses of the statute were not the focus of the Court. Significantly, as plaintiff has noted, the Court took special notice of the fact that "Congress carefully crafted a procedure for removing ... disabilities [of convicts] in appropriate cases," id. 103 S.Ct at 995, and cited section 925(c), the very relief statute which the plaintiff has tried unsuccessfully to have applied to him. Arguably, the Court felt free to dwell solely on questions of statutory interpretation because of this "escape clause" in the statutory sections with which it was concerned. It is the absence of this procedure for escape from disability for former mental patients, particularly in light of its availability for convicts, that creates the constitutional infirmity with which we are concerned here. [footnote 7]

The failure of the statute to provide former mental patients with the opportunity to contest their firearm disability is irrational in two ways that offend the due process and equal protection components of the fifth amendment. First, the statute offends the equal protection rights of former mental patients by treating them differently than others similarly situated, viz, ex-convicts, without any logical justification for doing so. Second, the statute offends the due process rights of these individuals because it deprives them permanently and without any rational basis of the opportunity to demonstrate that they are no longer, or never were, incapable of handling firearms safely.

1. Equal Protection

Sub-sections (d)(4) and (h)(4) prohibit sales of firearms to, or purchases of firearms by, any person

> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable for a term exceeding one year;
> (2) who is a fugitive from justice;
> (3) who is an unlawful user of or addicted to marijuana or any depressant or stimulant drug ... or narcotic drug; or
> (4) who has been adjudicated as a mental defective or who has been committed to any mental institution.

Of these, only ex-convicts and former psychiatric patients are classed according to a past occurrence in their lives which might raise a presumption that they would be incapable of handling firearms safely in the future. All of the other classes of individuals are subject to present infirmities which are obviously direct indications that they might not be trustworthy with weapons. The statutory scheme allows the subject of a past conviction to show his reformation, in section 925, but does not allow the same opportunity to the subjects of a past commitment proceeding. Thus, out of all of the categories of individuals disabled from purchasing firearms, only the former mental patients are permanently disabled on the basis of a past event that may or may not be an indicator of their present ability to handle firearms,

with no opportunity to establish that, in fact, they are now capable of safe handling. [footnote 8]

There is no rational basis for thus singling out mental patients for permanent disabled status, particularly as compared to convicts. While, as noted below, this court objects to presumptively barring any individual based on a past event from the opportunity to prove that he or she should be released from disability, rational analysis suggests that, if anything, the bar would be more logically applied to convicts than to former mental patients, rather than vice versa. First, the bar has a punitive aspect which may be appropriate for one who has been duly convicted of a crime, but not for an innocent former mental patient. See Plyler v. Doe, supra, 457 U.S. at 220, 102 S.Ct at 2396 ("legal burdens should bear some relationship to individual responsibility or wrongdoing"). Second, individuals who are convicts have demonstrated that they are capable of criminal activity by actually committing the crime for which they were convicted, c.f., Jones v. United States, 463 U.S. 354, 103 S.Ct. 3043, 3049, 77 L.Ed.2d 694 (1983) ("[t]he fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act certainly indicates dangerousness"); former mental patients have not, by virtue of that status, indicated anything more than that they at one time were adjudged to have a propensity for disruptive activity. [footnote 9] Third, the committed patient who is released, as was Galioto, shortly after his commitment, may not have the same incentive to appeal the commitment as a convicted felon, so the propriety of the initial commitment may never be fully explored. The initial commitment proceeding is likely to be much more emergent than a criminal proceeding as well, if the proceeding is begun only upon a patient's seventy-two hour notice of intention to leave, pursuant to New Jersey Statute Annotated 30:4-46 (hospital must discharge voluntarily admitted patient within seventy-two hours of request to leave absent commitment). More over, the commitment proceeding is likely to have fewer procedural safeguards (e.g., no right to a jury, N.J.Stat.Ann. 30:4-42; "clear and convincing" burden of proof rather than "beyond a reasonable doubt"). This last point is particularly disturbing in light of the studies cited by plaintiff, Mem. at 12, to the effect that commitment proceedings are replete with erroneous factual findings.

In sum, permanent disability is more appropriately accorded to convicts, if anyone, than to former mental patients. The only "rational" reason for failing to provide persons with psychiatric histories the opportunity to contest their disability must be based on some "archaic and stereotypic notions", Tacoma, 720 F.2d at 1129, citing Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 723, 102 S.Ct. 3331, 3335, 73 L.Ed.2d 1090 (1982), that mental illness is always, in every instance, permanent and incurable. This ignores expanding knowledge about the causes of mental illnesses, their reversibility and treatment.

2. Substantive Due Process

The statute is unconstitutional not only because it treats former mental patients differently from and inferior to convicts, but also because it presumptively denies former mental patients the opportunity to establish that they no longer present the danger against which the statute was intended to guard. The statute in

effect creates an irrebuttable presumption that one who has been committed, no matter the circumstances, is forever mentally ill and dangerous. An irrebuttable presumption violates the due process rights of the individual against whom it is applied unless it is "at least rationally related to a legitimate state objective." Maimed v. Thornburgh, 621 F.2d 565, 575, 578 (3d Cir.), cert. denied, 449 U.S. 955, 101 S.Ct. 361, 66 L.Ed.2d 219 (1980); see also Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (unconstitutional to presume that all unwed fathers are unfit as parents); Gumtankin v. Costanzo, 556 F.2d 184 (3d Cir. 1977) (unconstitutional to presume blind teacher not competent to teach English in public schools). This court does not question that the regulation of purchases and sales of firearms for the safety of the public is a legitimate, indeed substantial, state objective. But the application of an irrebuttable presumption against ownership of firearms by former mental patients is not a rational means of achieving that objective. Cf. Hetherton v. Sears, Roebuck & Co., 652 F.2d 1152 (3d Cir. 1981) ("[w]hile it may be true that [the state] could ban the sale of all deadly weapons, it does not follow that the state, having abrogated its power to effect a total ban," can regulate sale of weapons in an irrational manner).

The statute in question is irrational because, without any good faith extrinsic justification, such as administrative cost, it relies on psychiatric evidence introduced in one proceeding to impose a burden on an individual, and then refuses to accept the same evidence when the individual seeks to have the burden removed. At the outset, the court notes that the government has never questioned in this litigation the feasibility of affording relief proceedings to former mental patients. Indeed, given that the statutory scheme under examination here allows for relief from disability in cases involving convicts, the government cannot in good faith contend that its refusal to allow relief in the case of former mental patients is based on a concern over the expense of the relief procedure or its administrative feasibility. Neither does the relief procedure contemplated here implicate the concerns of repose and economy underlying the judicial principles of res judicata and collateral estoppel. The relief proceeding is not aimed at relitigating the issues litigated at the previous commitment hearing, but focuses on present circumstances, and on an ongoing civil disability independent of the original commitment.

Absent any rationale of economy or efficiency, the court can find no rationale for the statute but an archaic, stigmatizing, unreasoning fear of the mentally ill. As noted previously, "[l]egislation predicated on such prejudice is easily recognized as incompatible with the constitutional understanding that each person is to be judged individually." Plyler, 457 U.S. at 216 n. 14, 102 S.Ct. at 2394 n. 14. In plaintiff Galioto's case, the very physician who certified he should be committed, Dr. Alvarez, has now certified that Galioto is competent to handle a firearm. Indeed, the state courts that committed Galioto have now issued him a firearm identification card. Even if these events should not automatically relieve Galioto of his disability, cf. Dickerson, supra, they indicate that Congress' concerns in creating the disability for certain higher risk firearm purchasers no longer obtain in Galioto's case. The statute, however, permanently forecloses Galioto from challenging that disability.

Even the very evidence, namely, psychiatric opinion, which was

responsible for the stigmatic label in the first instance, cannot erase this mark. The court appreciates the "fallibility of psychiatric diagnosis", Addington v. Texas, 441 U.S. 418, 429, 99 S.Ct. 1804, 1811, 60 L.Ed.2d 323 (1979), and the fact that "some in the psychiatric community are of the view that clinical predictions as to whether a person would or would not commit violent acts in the future are 'fundamentally of very low reliability' and that psychiatrists possess no special qualifications for making such forecasts.' " Estelle v. Smith, 451 U.S. 454, 472, 101 S.Ct. 1866, 1878, 68 L.Ed.2d 359 (1981) (citations omitted). But the shortcomings of psychiatry cannot excuse the failure to afford a former mental patient a hearing on his current mental competence for the purpose of overcoming a civil disability, where the government has been satisfied to rely on psychiatric evidence in imposing the disability in the first instance. That failure amounts to a denial of due process.

CONCLUSION

The court does not today find it irrational to prohibit former mental patients generally from the purchase of firearms. The court finds rather that such a general prohibition is irrational and unconstitutional, if it does not include some provision for the granting of relief from disability to former mental patients in appropriate cases. As the defendant has noted, this court does not have the power to "create a review procedure for people in plaintiff's category," Defendant's Reply Mem. at 9, because "[t]hat would be a legislative function." The court can only declare those provisions of 18 U.S.C. section 921 et seq. which have been used to deprive plaintiff of his ability to purchase a firearm, without affording him any opportunity to contest that disability, to be void as violative of the fifth amendment of the United States Constitution.

The court does not mean to suggest by this opinion that all former sufferers of mental illness should be permitted to own firearms. But, rather, if Congress has determined that there are circumstances under which former criminals can own and possess weapons and a means is provided to establish such entitlement, former mental patients are entitled to no less. To hold otherwise is to implicitly declare that mental illness is incurable and that all those who have once suffered from it forever remain a danger to society. Such a conclusion is repugnant to our principles and is contradicted by the multitude of such persons who now live among us without incident. The anguish caused by mental illness is great enough without the imprimatur of a lifetime stigma embossed by congressional action.

Because the holding of the court in this matter will create a void in an area which clearly requires governmental control and regulation, the court, on its own motion, will stay the effective date of its order for a period of 120 days, so as to afford to Congress an opportunity to correct the constitutional infirmities found to exist in the present legislation and to accord to former mental patients the rights, dignity and due process to which they are entitled.

FOOTNOTES

1. Another subsection of section 922, section 922(h)(4), makes it

unlawful For "any person ... who has been adjudicated as a mental defective or who has been committed to any mental institution ... to receive any firearm ... which has been shipped or transported in interstate or foreign commerce."

2. Firearm disabilities equivalent to those imposed on persons who have been adjudicated mentally defective or committed to a mental institution are imposed on persons who have "been convicted in any court of ... a crime punishable by imprisonment For a term exceeding one year." sections 922(d)(1) and 922(h)(1).

3. The court has serious doubt whether an applicant could collaterally attack such a commitment in this type of a proceeding, even if appropriate means were provided to seek relief.

4. The Court has recently granted certiorari on the question of whether the mentally retarded are a "quasi suspect" class entitled to enhanced scrutiny. City of Cleburne v. Clebume Living Center, -- U.S. --, 105 S.Ct. 427, 83 L.Ed.2d 354 (1984); see also "Subject Matter Summary of Cases Recently Filed." 53 U.S.L.W. 3343-44 (Nov. 6, 1984).

5. Prior to Schweiker, in which the Supreme Court expressly reserved judgment on the standard of review for classifications of the mentally ill as a discrete group, the Third Circuit applied a rational basis test in evaluating the constitutionality of a state statute setting differential time limits for benefits for hospitalization in mental as opposed to general hospitals. See Doe v. Colaurri, 592 F.2d 704 (3d Cir. 1979). The court relied on the Supreme Court's summary affirmance in Legion v. Weinberger, 414 U.S. 1058, 94 S.Ct. 564. 38 L.Ed.2d 465 (1973), aff'g Legion v. Richardson, 354 F.Supp. 456 (S.D.N.Y. 1973) (three-judge court), in which the court below employed a rational basis test to uphold a limitation on the number of days of Medicaid and Medicare coverage for psychiatric as opposed to general hospitalizations for patients over 65. The explicit reservation of judgment in Schweiker, noted in Cospito, indicates that none of these cases supports the proposition that express classifications of individuals according to their history of psychiatric treatment are inevitably subject only to a rational basis analysis.

6. The parties have applied only a rational basis analysis.

7. Defendant also cites a 1983 decision from the District of South Carolina as having considered this issue. United States v. Jones, 569 F.Supp. 395 (D.S.C. 1983). Again, this court must note its agreement with the plaintiff that the Jones court did not address the procedural infirmity this court finds in the statute. In Jones, the defendant, a former mental patient, was not seeking to have her disability removed so that she could purchase a firearm; she was instead under indictment for having purchased a firearm without any release from the statutory disability, a purchase she had accomplished by falsifying information about her prior hospitalizations. Presented with those facts, the Jones court found that it was not irrational "to prohibit persons within the category of 18 U.S.C. section 922(d)(4) from purchasing and/or receiving firearms." 569 F.Supp. at 399. This court does not disagree with that conclusion. But to conclude that it is rational to prohibit former mental patients in general from purchasing or receiving firearms is not to conclude that it is rational to deny individual

former mental patients the opportunity to seek relief from this general disability with a showing that they are responsible enough to handle a firearm safely and legally, particularly when such an opportunity is afforded ex-convicts.

8. Section 925(c) does exclude convicts whose past convictions were for firearms-related offenses from its relief provisions, but such past convictions might rationally be considered good indicators of a potential for future firearms abuse, in contrast to a mere general finding of mental illness in the past.

9. An individual may be committed in New Jersey if "there is believed to exist in the patient a diagnosed mental illness of such degree and character that the person, if discharged, will probably imperil life, person, or property." N.J. Stat.Ann. 30:4-48. Thus, one without violent tendencies toward people may be committed on the belief that he will likely "imperil ... property."

No need for dis drsch b/c of fed'l law prohib'n

Dsida, Michael

From: Bruhn, Mike
Sent: Tuesday, February 20, 2001 3:07 PM
To: Dsida, Michael
Subject: RE: concealed carry

Mike,

Gundy and I talked about this, and we believe the answer is yes.

Mike Bruhn
Rep. Gunderson's office

-----Original Message-----
From: **Dsida, Michael**
Sent: Monday, February 19, 2001 2:17 PM
To: Bruhn, Mike
Subject: concealed carry

If someone is convicted of making a false statement in a license application, should the person be barred from ever being licensed subsequently?