

Firearms and Psychiatric Hospitalization Laws Applicable in Maine

STATE LAW

34-B M.R.S.A. §1207(6-A). Disclosure of danger. “A licensed mental health worker shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonable able to prevent or minimize the threat.”

34-B M.R.S.A. §1207(8). Disclosure of knowledge of firearms. “A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.”

34-B M.R.S.A. §3864(5)(A-1). [Involuntary commitment hearing.] “Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1.”

34-B M.R.S.A. §3864(13). Firearms possession prohibition notification. “A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.”

34-B M.R.S.A. §3871(7). Firearms and discharge planning. “Discharge planning must include inquiries and documentation of those inquiries into access by the patient to firearms and notification to the patient, the patient’s family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, “firearm” has the same meaning as in Title 17-A, section 2, subsection 12-A.”

15 M.R.S.A. §393(1)(E). Possession of firearms prohibited to certain persons. “A person may not own, possess or have under that person's control a firearm ... if that person ... [h]as been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4, paragraphs A to C;
- (2) Found not criminally responsible by reason of insanity with respect to a criminal charge;
- or
- (3) Found not competent to stand trial with respect to a criminal charge.”

15 M.R.S.A. §393(4-A). Application for relief. “Except as otherwise provided, a person [who has been involuntarily committed] may, after the expiration of 5 years from the date of final

discharge from commitment, apply to the commissioner for relief from the disability [i.e., from the prohibition against possessing firearms]. ... [Following a hearing on the issue,] if the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief.” [Maine’s process under this statute was disapproved by the U. S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, in letter of December 28, 2009, stating that Maine’s relief process will not end the federal prohibition from firearms possession.]

FEDERAL LAW

45 C.F.R. §164.512(a) [HIPAA required-by-law standard].

- (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.
- (2) A covered entity must meet the requirements described in paragraph (c) [abuse, neglect and domestic violence], (e) [judicial and administrative purposes] or (f) [law enforcement purposes] ... for uses or disclosures required by law.

45 CFR §164.512(f)(1) [HIPAA law enforcement standard.] “A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official ... as required by law [except child abuse reporting and public health reporting, which are covered by other HIPAA regulations].”

18 USC 922(g) [Brady Bill prohibition.] “It shall be unlawful for any person ... who has been committed to a mental institution ... to possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

U.S. v. Rehlander, No. 10-1812, slip op. at 10 (1st Cir. Jan. 13, 2012) “[W]e now conclude that section 922 [the Brady Bill prohibition] should not be read to encompass a temporary hospitalization attended only by the ex parte procedures of section 3863 [blue paper admission]” (reversing *U.S. v. Chamberlain*, 159 F. 3d 656 (1st Cir. 1998) and *U.S. v. Holt*, 464 F. 3d 101 (1st Cir. 2006), which had held that a blue paper hospitalization in Maine triggered a federal prohibition against gun possession).

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