

FEDERAL FIREARMS PROHIBITION UNDER 18 U.S.C. § 922(g)(4)
PERSONS ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION

Any person who has been “adjudicated as a mental defective” or “committed to a mental institution” is prohibited under Federal law from shipping, transporting, receiving, or possessing any firearm or ammunition. Violation of this Federal offense is punishable by a fine of \$250,000 and/or imprisonment of up to ten years. See 18 U.S.C. §§ 922(g)(4) and 924(a)(2). The terms enumerated below are located in 27 C.F.R. § 478.11.

A person is “**adjudicated as a mental defective**” if a court, board, commission, or other lawful authority has made a determination that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease:

- ❖ Is a danger to himself or to others;
- ❖ Lacks the mental capacity to contract or manage his own affairs;
- ❖ Is found insane by a court in a criminal case; **or**
- ❖ Is found incompetent to stand trial, or 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.

A person is “**committed to a mental institution**” if that person has been formally committed to a mental institution by a court, board, commission, or other lawful authority.

The term **includes** a commitment:

- ❖ To a mental institution involuntarily;
- ❖ For mental defectiveness or mental illness; or
- ❖ For other reasons, such as for drug use.

The term **does not include** a person in a mental institution for observation or by voluntary admission.

The term “**lawful authority**” means an entity having legal authority to make adjudications or commitments.

The term “**mental institution**” includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

AFFIRMATIVE DEFENSES

A person is **not prohibited** under 18 U.S.C. § 922(g)(4) if:

The person received relief from Federal firearms disabilities under 18 U.S.C. § 922(g)(4) by:

- ❖ The Bureau of Alcohol, Tobacco, Firearms and Explosives under 18 U.S.C. § 925(c); **or**
- ❖ A proper Federal or State authority under a relief from disabilities program that meets the requirements of the NICS Improvement Amendments Act of 2007, Public Law 110-180.

The mental health adjudication or commitment was imposed by a Federal department or agency, **and** the:

- ❖ Adjudication or commitment was set aside or expunged;
- ❖ Person was fully released from mandatory treatment, supervision, or monitoring;
- ❖ Person was found to no longer suffer from the disabling mental health condition;
- ❖ Person has otherwise been found to be rehabilitated; or
- ❖ Adjudication or commitment was based solely on a medical finding without opportunity for hearing by the Federal department or agency with proper jurisdiction.

For further information about section 922(g)(4) or other firearms prohibitions, please contact your local field office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) by calling (800) 800-3855.

Note that the tense (past/present) used here is vague, we believe deliberately, so that the government may reject gun applications that it chooses to reject — without due process.