



**Senate Counsel, Research, and Fiscal Analysis**

State of Minnesota

# **Firearms Possession by Persons with Mental Illness**

Kenneth P. Backhus  
Senate Counsel

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This memorandum addresses the eligibility of persons with mental illness to possess firearms.

In general, a person may be prohibited from possessing a firearm under either Minnesota law or federal law, or both, based on such factors as the person's criminal history, age, chemical dependency issues, etc. This is also true of persons with mental illness.

### Minnesota Law

Under Minnesota law (section 624.713), a person who is or has ever been committed in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, to a treatment facility, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness, is prohibited from possessing a firearm. As used in the law, a judicial determination means a court proceeding pursuant to the civil commitment law or a comparable law from another state. Thus, Minnesota law requires the person to have been: (1) committed to a treatment facility via a judicial determination by a court under the civil commitment law; or (2) found incompetent to stand trial or not guilty by reason of mental illness. If this has occurred, the person may no longer legally possess a firearm.

This standard is a relatively high one. Common situations such as seeing a therapist, taking medications, etc., would not result in a prohibition. A person who has been diagnosed with a mental illness or who has an undiagnosed mental illness, even a potentially severe one, does not meet this standard. Similarly, a person who has been subject to a 72-hour emergency hold under section 253B.05 also would not lose their right to possess a firearm. These situations, assuming they fall short of a judicially ordered commitment to a treatment facility do not meet the standard.

A person who has lost their ability to possess a firearm under Minnesota law based on a mental illness may seek to have this disability removed by petitioning a court. A court is authorized to grant the petition in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that: (1) the person is not likely to act in a manner that is dangerous to public safety; and (2) the granting of relief would not be contrary to the public interest. When making this determination, the court may consider evidence from a licensed medical doctor or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of three consecutive years. If the relief sought is denied, the person may appeal the denial de novo.

### Federal Law

Under federal law, a person may not possess a firearm if the person has been "adjudicated as a mental defective" or "committed to a mental institution." The former occurs if a court, board, commission, or other lawful authority has determined that the person, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease is: (1) a danger to

self or others; or (2) lacks the mental capacity to contract or manage the person's own affairs. The term includes being found not guilty by reason of insanity or incompetent to stand trial. Being committed to a mental institution under the federal regulations means that a court, board, commission, or other lawful authority has formally committed the person to a mental institution. This includes involuntary commitments, but does not include persons who are admitted to a mental institution voluntarily or for observation. Similar to Minnesota law, the federal standard is a relatively high one when it comes to disqualifying individuals based on mental illness.

The ability of a person to successfully seek relief from the federal mental illness disability for firearms possession is limited and extremely complicated. Currently, under federal law there is no avenue for persons to seek relief except if it is a federal agency that imposed the mental health adjudication or involuntary commitment, such as the Veterans Administration. In these situations, the agency is required to provide a process for relief. For all other persons seeking relief from the federal disability, the person has no clear recourse (other than attempting to sue for a violation of the person's constitutional rights) except to seek relief under state law. A state law may provide relief from the federal (as well as the state) disability but only if the state law meets specified federal criteria. Minnesota's law (described earlier) does not. Thus, in Minnesota, a person may successfully petition a court to remove the mental illness disability imposed by Minnesota law but this will not affect the independent federal prohibition (which is for the most part similar to the Minnesota one).