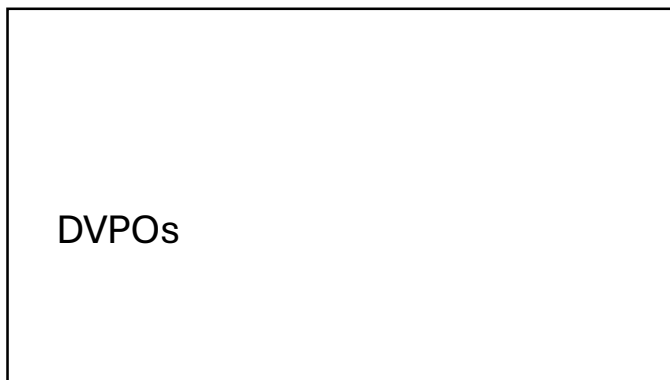
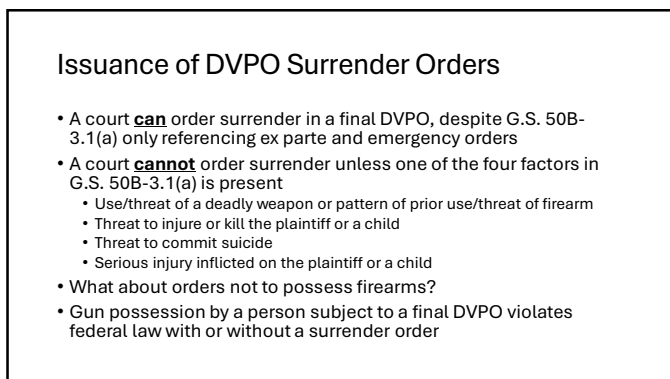




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Execution of DVPO Surrender Orders

- A surrender order does **not** allow a LEO to search the defendant's home/vehicle/person for firearms
- A LEO may be able to conduct a search with probable cause and a warrant or an exception



4

Retrieval of Guns When No Final DVPO Is Issued

- Current law
 - Retrieval (probably) requires a motion and order
 - G.S. 50B-3.1(d)(2): "The sheriff shall not release firearms, ammunition, or permits without a court order granting the release."
- Upcoming law, S.L. 2025-70
 - Defendant may "retrieve any weapons surrendered to the sheriff without additional order of the court" if an ex parte or emergency order expires and no DVPO is entered, or if a court denies a DVPO
 - Sheriff must conduct a NICS check and determine that D is not disqualified

5

Retrieval of Guns after Final DVPO Expires

- The defendant may file a motion within 90 days, G.S. 50B-3.1(f)
 - What about untimely motions?
- The court must notify the plaintiff and the sheriff
- Court must hold a hearing to determine whether the defendant is disqualified
 - If disqualified → motion denied, sheriff can seek disposition order
 - If **not** disqualified → motion should be granted

6

Who Is Disqualified?

- The main concern is federal disqualifiers in 18 U.S.C. § 922(g)
 - Felons
 - Fugitives
 - Drug users/addicts
 - IVCs
 - Aliens unlawfully in the United States
 - Dishonorable discharges
 - Persons who have renounced United States citizenship
 - Persons convicted of a “misdemeanor crime of domestic violence
- And defendants with criminal charges still pending involving the victim

7

Storage Fees

- The sheriff “may charge the defendant a reasonable fee” for storage of firearms and ammunition, G.S. 50B-3.1(d)(2)
- What’s reasonable?
- Is that up to the sheriff alone?
To the court?

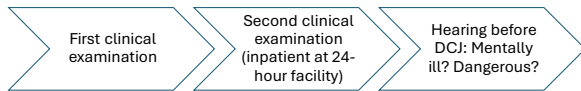


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IVCs

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An Oversimplified View of the IVC Process



10

Federal Statute

- 18 U.S.C. § 922(g)(4) makes it a crime for a person “who has been adjudicated as a mental defective or who has been committed to a mental institution” to possess a firearm

11

First Prong: “Adjudicated as a Mental Defective”

- 27 CFR § 478.11 says that “adjudicated as a mental defective” means a “determination by a court . . . or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease [1] [i]s a danger to himself or to others; or [2] [l]acks the mental capacity to contract or manage his own affairs”
- Civil incompetency/guardianship under Chapter 35A likely qualifies

12

Second Prong: "Committed to a Mental Institution"

- 27 CFR § 478.11 says that "committed to a mental institution" means a "formal commitment of a person to a mental institution by a court . . . or other lawful authority" including involuntary commitment "for mental defectiveness or mental illness" or drug use. It "does not include a person in a mental institution for observation or a voluntary admission to a mental institution."

13

Things to Remember about IVCs

- The federal disqualifier applies only after a judge orders IVC
- Doesn't apply if the respondent agrees to voluntary treatment
- There is no legal basis for an IVC order to require the respondent to surrender firearms
- There is limited authority for LEOs to seize firearms from a person who has been IVCd

14

Restoration of Rights

15

After a Felony: Statutory Process

- G.S. 14-415.4
- Via petition to the district court, AOC-CV-654
- DA must be notified and may oppose restoration
- Petitioner may not have more than one felony conviction
 - Consolidated convictions count as one
- Conviction must be nonviolent
- 20 years must have passed since restoration of rights

16

After a Felony: State Constitutional Process

- *Britt v. State*, 363 N.C. 546 (2009)
- Separate from the statutory process and potentially more flexible
- The court should consider
 - (1) Whether the conviction(s) were violent
 - (2) The age of the conviction(s)
 - (3) Whether the person has been law-abiding since the conviction(s)
 - (4) Any history of lawful gun ownership
 - (5) The person's "assiduous and proactive compliance" with the felony disqualifier
- Rare, especially when raised as a defense to a criminal charge of unlawful gun possession

17

After a Misdemeanor Crime of Domestic Violence

- There is no statutory process for the restoration of rights after such a conviction
- There are no appellate cases holding or suggesting that *Britt* relief would be available
- A defendant could seek to have the conviction itself vacated, pardoned, or expunged

18

After an IVC

- G.S. 14-409.42, AOC-SP-211
- A person with a prior IVC may petition the district court for restoration
- The clerk must notify various parties, including the DA
- The burden is on the petitioner to show lack of dangerousness
- The hearing is presumptively closed
- No waiting period to file
- If denied, the person may appeal to superior court or wait at least a year to file again

19

Questions?

20
