

Restoring Firearm Rights after an Involuntary Commitment

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Introduction

- Backstory
- Involuntary Commitment (IVC) and NICS
- Restoration Procedure

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Backstory

- 1934 National Firearms Act
 - first major federal legislation on firearms
 - nothing about involuntary commitments

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- 1968 Gun Control Act
 - added 18 USC 922(g)(4): “It shall be unlawful for any person . . . who has been committed to a mental institution . . . to *ship or transport [or to receive]* any firearm or ammunition in interstate or foreign commerce”
 - 1986 added express ban on *possession* (unlawful to “possess in or affecting commerce”)

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- Applied as per regulations from ATF
- 27 CFR 478.11: “committed to a mental institution” means involuntary commitment
 - does *not* include voluntary commitment
 - “The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution”

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- Legal effect: lifetime federal ban on possessing any firearms or ammunition following involuntary commitment
- Part of same statute as federal felon in possession, 18 USC 922
- Crime punishable to same extent as felon in possession

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- For example: *United States v. Dorsch*, 363 F.3d 784 (8th Cir. 2004)
 - 27 months in prison
 - Rare but possible

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IVC and NICS

- National Instant Criminal Background Check System (NICS)
- Created 1993
- Database maintained by FBI
- Law enforcement and gun sellers check to be sure person who wants a gun is allowed to have a gun

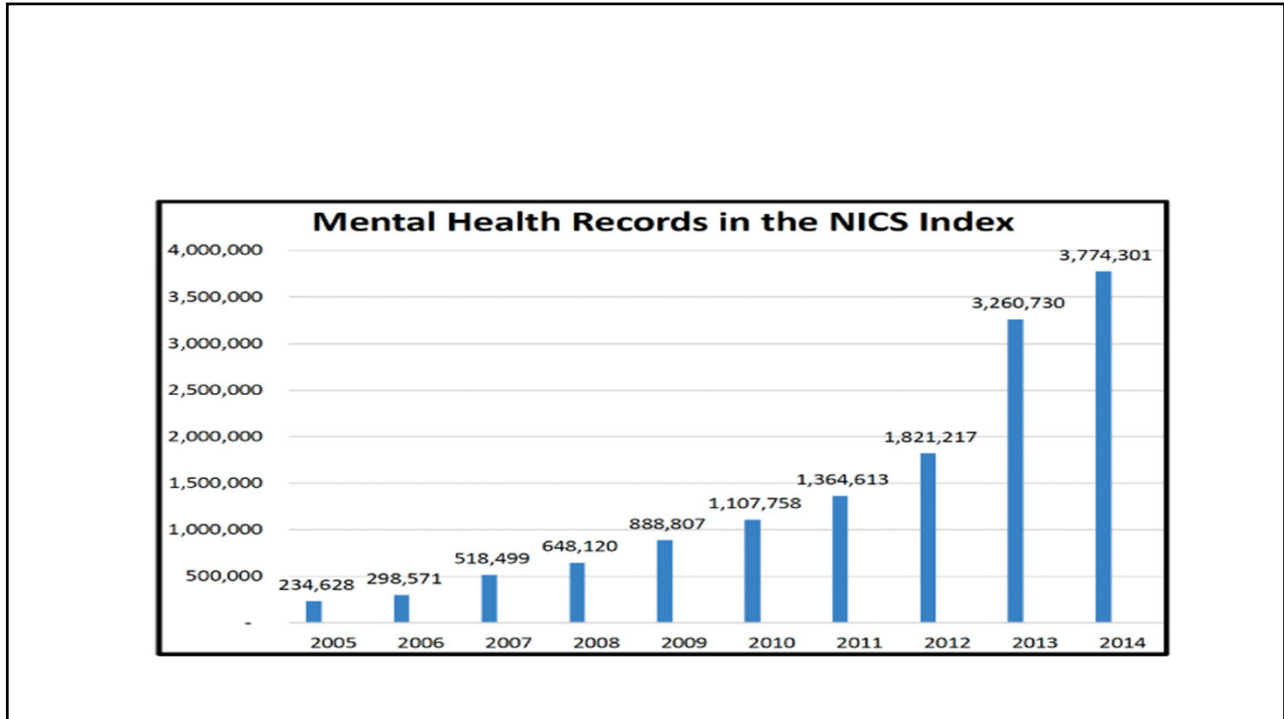
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- Per 18 USC 922(g)(4), IVC's should have been in there
- But they were largely absent
 - Confidential files gathering dust on courthouse shelves across the country
- Then: 2007 Virginia Tech shooting
 - Shooter was able to buy firearm because his mental health history was not in NICS

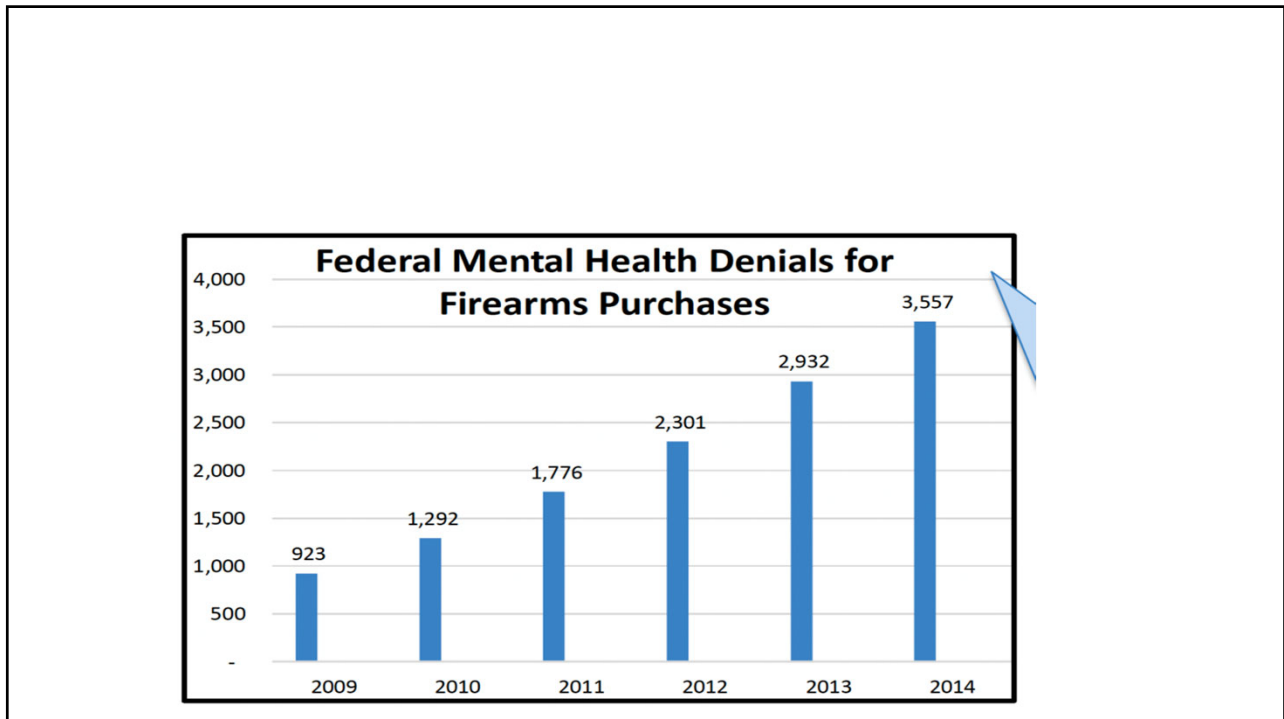
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- The fix: NICS Improvement Amendments Act of 2007
- \$72 million to states to put their mental health records in NICS
- It worked: two graphs from search.org (National Consortium for Justice Information and Statistics)

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- North Carolina did its part
- Former G.S. § 122C-54(d1), now § 14-409.43
- Requires clerk to report IVC's to NICS "not later than 48 hours after receiving notice" of the IVC

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Restoration Procedure

- IVC firearm prohibition is permanent, unless rights are restored
- Regardless of person's age, i.e., even if IVC was done prior to age 18
- Restoration of rights made possible in 2007 by NICS Improvement Amendments Act

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(b) AUTHORITY TO PROVIDE RELIEF FROM CERTAIN DISABILITIES WITH RESPECT TO FIREARMS.—If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 102(c)(1)(B), the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

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- In other words: Congress authorized *state* law that restores the *federal* right to possess firearms
- State statute has to be approved by ATF
- North Carolina's statute has been approved

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Subject: ATF Response
From: <Edward.C.Courtney@usdoj.gov>
Date: 1/3/18, 1:17 PM
To: <keith@williamslawonline.com>

Mr. Williams: Thank you for your recent inquiry to ATF. Attached are two documents: the first is your actual request and our response to it. The second is a document showing NC as a certified State Relief Program. Thank you for your inquiry and I trust our answer is responsive. Thank you.

Ed Courtney

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- No other way to restore firearm rights following IVC
- Specifically: NC's expunction statute for under-18 IVC's does *not* restore firearm rights (G.S. 122C-54(e))
 - ATF will not accept because NICS improvement act did not expressly mention or authorize restoration by expungement
 - Compare: state expunction of state felony conviction does restore federal firearm right because Congress expressly allowed it (18 USC 921(a)(20))

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- Our IVC restoration statute is 14-409.42
- Form AOC-SP-211
- Must be at least 18 at time of filing
- Can file upon expiration of IVC
 - no waiting period required

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- Must show by preponderance “that the petitioner 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”
 - Language taken straight from NICS improvement act
- District Attorney should present any “relevant” information to the contrary
- Petitioner must submit character evidence (character witness affidavits)

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- Hearing sometimes adversarial, sometimes not
- Hearing is closed unless the court orders otherwise
- Filed in District Court; if denied, you can take *de novo* appeal to Superior Court

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- If denied, you can reapply but only after a one-year waiting period
- If granted, Clerk makes appropriate entry into NICS
 - 14-409.42(d): "Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to [NICS]"
- Can sometimes take a few weeks to take effect

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- ATF Form 4473 required to purchase firearm from federally licensed firearm dealer
- Page 5 of the fine print recognizes the restoration:

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EXCEPTION: Under the NICS Improvement Amendments Act of 2007, a person who has been adjudicated as a mental defective or committed to a mental institution in a State proceeding is not prohibited by the adjudication or commitment if the person has been granted relief by the adjudicating/committing State pursuant to a qualifying mental health relief from disabilities program. Also, a person who

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Conclusion

- Glad to talk if you have any questions
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- keith@williamslawonline.com

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