

# WHEN A STOPGAP MEASURE TRIGGERS A PERMANENT PROSCRIPTION: THE INTERPRETATION OF “COMMITTED TO A MENTAL INSTITUTION” IN THE GUN CONTROL ACT OF 1968

## I. INTRODUCTION

Jane is a private bodyguard. One day, terrible tragedy strikes—her family is killed in a car accident. Jane is grief stricken when she hears the news. She collapses, crying, and asserts that her life is no longer worth living. Her sister, worried that Jane might be serious in her protestations and might indeed take her own life, calls a social worker. Jane’s sister explains that she is worried that Jane is suicidal. Jane protests that she is not actually suicidal, but the social worker asks a judge, in an *ex parte* hearing, for an emergency order to detain Jane for observation in a mental hospital, under the state’s “Emergency Admission” statute.<sup>1</sup> The judge signs the order because the social worker has probable cause to think that Jane is a danger to herself.<sup>2</sup> Without a hearing, an opportunity to testify, or a right to counsel, Jane is placed in the hospital against her will. Once the hospital admits Jane, a physician examines her. Because Jane is overwhelmed by anguish, the physician has reason to believe that Jane is a danger to herself.<sup>3</sup> The next morning, a psychiatrist examines Jane and determines that Jane, though sad and shocked by the horrible events that befell her family, is not mentally ill and is not a danger to herself or to anyone else. The mental institution releases her.<sup>4</sup>

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1. Under title 19, section 334-59(a)(2) of the Hawaii Revised Statute, for example, a judge can issue an *ex parte* emergency detention order upon the oral application of a clergy member, an attorney, “any state or county employee in the course of employment,” or a social service or health professional. HAW. REV. STAT. ANN. § 334-59(a)(2) (Michie 2000).

2. Under Hawaii law, petitioners, in this hypothetical a social worker, must state that they have “probable cause to believe the person is mentally ill . . . [and] is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and in need of care or treatment.” § 344-59(a)(2).

3. Under the Hawaii statute, licensed physicians must examine patients upon their arrival at the treatment facility. §334-59(b). If the examining physician “has reason to believe” that the person is “[m]entally ill . . . [and] imminently dangerous to self or others, or is, gravely disabled, or is obviously ill; and [i]n need of care or treatment . . .” then the physician may admit the patient. § 334-59(d).

4. Under the Hawaii statute, any time physicians decide that the patient does not meet the three criteria for emergency admission, they must release the patient. § 334-59(e). Facilities *must* release patients within forty-eight hours of admission unless the patients voluntarily admit themselves, or the state begins formal commitment proceedings. § 334-59(e).

After taking time off from work, Jane attempts to return to her job as a bodyguard. Federal agents arrest Jane when she places her gun in her holster, under the Gun Control Act of 1968 (the “Act”)<sup>5</sup> for possessing a gun after having been “committed to a mental institution.”<sup>6</sup> If Jane is in Louisiana, the court will dismiss the charges on the grounds that Jane was never actually “committed” and allow her to return to her job.<sup>7</sup> If Jane is in Maine, the court will convict Jane under the Act and warn her that she must apply for discretionary relief from the Secretary of State if she ever wishes to be a bodyguard again.<sup>8</sup>

The Act makes it illegal for “any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution” to “possess . . . or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”<sup>9</sup> Courts have disagreed on the test for determining what procedure constitutes commitment under the Act. Although courts agree that the commitment must be involuntary to trigger the Act,<sup>10</sup> the circuits disagree as to whether a temporary involuntary

5. 18 U.S.C. §922(g)(4) (2000). Congress combined 18 U.S.C. §§ 922(d), 922(g), 922(h) and 18 U.S.C. App. § 1202 into current §922(g). *United States v. Giardina*, 861 F.2d 1334, 1335 n.1 (5th Cir. 1988) (citations omitted).

If Jane were a public employee, the Act would not prevent her from possessing firearms in her official capacity. *See* 18 U.S.C. §925(a)(1) (2000). 18 U.S.C. § 925(a)(1) provides an exception to the Act for government units:

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

*Id.* Thus, §925(a)(1) would permit a police officer in Jane’s situation to possess a firearm in her official capacity.

6. 18 U.S.C. § 922(g)(4) (2000).

7. *Cf. Giardina*, 861 F.2d at 1337 (holding that an emergency commitment did not meet the formal commitment requirement of the Act).

8. *Cf. United States v. Chamberlain*, 159 F.3d 656, 664-65 (1st Cir. 1998) (holding that the State’s commitment of the defendant without a hearing or representation by an attorney constituted commitment under the Act).

9. 18 U.S.C. §922(g)(4) (2000). 18 U.S.C. §922(g)(4) provides that:

(g) It shall be unlawful for any person—

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(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

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to ship or transport in interstate or foreign commerce, or 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.

*Id.*

10. *See, e.g., Chamberlain*, 159 F.3d at 662 n.10, 663 (agreeing with district court that “‘commitment’ denotes involuntary action of some kind”).

hospitalization without a formal hearing satisfies the Act's commitment requirement.<sup>11</sup> The Act does not define the term "committed" and there is little legislative history to help courts decipher the congressional intent. Courts diverge on two prongs of their analyses of the Act. First, although all courts have agreed that the interpretation of "committed" is a federal question, the courts differ on whether they should give deference to the state's involuntary hospitalization laws.<sup>12</sup> One group of courts defers to the state legislature that enacted the statute under which the patient was involuntarily hospitalized and examines the wording and nuances of that state statute.<sup>13</sup> Another group of courts instead creates a federal definition of "committed" that is not informed by the state's intent or word choice.<sup>14</sup> Second, courts differ in the interpretation of the congressional policy behind the Act.<sup>15</sup> All courts agree, as the United States Supreme Court expressed in *Huddleston v. United States*,<sup>16</sup> that Congress broadly intended to prevent dangerous people from possessing firearms.<sup>17</sup> However, courts disagree on whether Congress only intended to prohibit gun possession by people whom a state had formally committed to a mental institution, or whether Congress broadly intended to prevent gun possession by anyone whom a state had placed involuntarily in a mental institution regardless of the patient's opportunity for a hearing or the purpose of the confinement.<sup>18</sup> As a result, there is no clear definition of what constitutes "commitment" under the Act.

Part II of this Note provides both a brief overview of the concept of commitment and a history of how courts have dealt with interpreting the term

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11. See, e.g., *Chamberlain*, 159 F.3d at 663-64 (stating that the interpretation of "committed" does not depend on state law and giving "committed" a broad reading that includes involuntary confinement without a hearing); *United States v. Giardina*, 861 F.2d 1334, 1336-37 (5th Cir. 1988) (deferring to the state legislature's definition of "committed" and strictly construing the term "committed").

12. Compare *Giardina*, 861 F.2d at 1336 (carefully examining Louisiana state law to determine if the defendant's involuntary hospitalization was a commitment under Louisiana law), with *Chamberlain*, 159 F.3d at 662, 663 (explaining that the definition of commitment "should not turn primarily on the label attached by the state legislature to its procedures, but rather on the substance of those procedures" and that uniformity is one of the Act's goals).

13. See, e.g., *Giardina*, 861 F.2d at 1336.

14. See, e.g., *Chamberlain*, 159 F.3d at 662-63.

15. See cases cited *infra* note 18.

16. 415 U.S. 814, 828 (1974).

17. See, e.g., *Chamberlain*, 159 F.3d at 660.

18. Compare *United States v. Hansel*, 474 F.2d 1120, 1125 (8th Cir. 1973) ("If it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so."), with *Chamberlain*, 159 F.3d at 664 ("In denying firearms to those 'committed to a mental institution,' Congress appears to have cast a wider net—to 'maximize the possibility of keeping firearms out of the hands of' [persons suffering from mental illness].") (citation omitted).

“committed” for the purpose of the Act. Part III analyzes the different approaches that courts have taken to define the term “committed.” Part IV proposes how courts should interpret the Act and how Congress should redraft the Act to clarify its intentions and safeguard the rights of the mentally ill.

## II. OVERVIEW OF COMMITMENT

### A. Background

#### 1. Framework

The American Bar Association (ABA) states that “[i]nvoluntary civil commitment is the process by which mentally ill individuals who are dangerous to themselves, others or property, or who are unable to care for their basic needs, are forced to receive mental health care, usually in an inpatient facility.”<sup>19</sup> The process for commitment is different in each state, but generally, a third party petitions for the patient’s commitment, and then the patient, with legal counsel, attends a hearing before a judge, and sometimes a jury.<sup>20</sup>

In the civil context, the state can hospitalize a person against his or her will through an observational or temporary commitment, an emergency commitment, or a “regular” or “final” commitment.<sup>21</sup> Courts have usually

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19. AMERICAN BAR ASS’N, COMM’N ON THE MENTALLY DISABLED, INVOLUNTARY CIVIL COMMITMENT: A MANUAL FOR LAWYERS AND JUDGES 3 (1988). The ABA explains:

The principal purpose of civil commitment is treatment and protective isolation of the individual. Yet not all persons subjected to commitment procedures want to receive treatment, and many will refuse treatment provided in an institutional setting. Thus, the commitment process usually involves a tension between the rights and concerns of the individual subjected to the commitment petition, as represented by his/her lawyer, and the petitioner’s and state’s desire to provide treatment or isolation.

*Id.*

20. See AMERICAN BAR ASS’N, COMM’N ON THE MENTALLY DISABLED, *supra* note 19, at 3. The ABA explains that although each state has a unique civil commitment process, most have a common framework. *Id.* First, either a third person petitions the state to commit the individual, or the individual poses an immediate risk of danger. *Id.* Usually, the individual has the assistance of counsel at a commitment hearing; however, the lawyer generally has little or no preparation time. *Id.* The individual and the individual’s lawyer oppose the state’s attorney or the petitioner’s lawyer before a judge, and sometimes a jury. *Id.* The mental health professional at the institution where the individual has been or will be hospitalized is also present, sometimes with an independent mental health professional who has examined the individual for the court. *Id.*

21. MICHAEL L. PERLIN, LAW AND MENTAL DISABILITY 53 (1994). See also BARBARA A. WEINER & ROBERT M. WETTSTEIN, LEGAL ISSUES IN MENTAL HEALTH CARE 44-47 (1993) (clearly distinguishing between “voluntary admission,” “informal admission,” “emergency admission,” “observational commitment,” and “civil commitment”).

granted any due process protections for people that the state is involuntarily hospitalizing in the context of “regular” commitments.<sup>22</sup> States require a lower standard of due process for involuntary emergency admission than for regular commitment:

Virtually all states have traditionally provided for some sort of commitment process to provide for the immediate apprehension and detention of persons in need of emergency commitment. The process is typically begun by the issuance of a warrant, based on allegations by a police officer, certified mental health professional, family member, or, in some cases, “any responsible person,” that a person is reasonably believed to be imminently dangerous to himself or others.

Empirical studies tend to reveal that in many cases in which such statutes are used, “no real emergency exists.” Because emergency procedures involve “a minimum of red tape and provide the quickest, easiest way to get a person to a hospital,” they have often been used as the standard means of institutionalization, especially in areas without readily available (or cooperating) physicians.<sup>23</sup>

The state’s power to confine a person involuntarily to a mental hospital comes from *parens patriae* authority, meaning “parent of the country,” and the state’s police power.<sup>24</sup> *Parens patriae* requires the government to protect the members of society who cannot protect themselves, such as minors and the mentally ill.<sup>25</sup> The government has the authority to commit a mentally ill person in order to provide treatment when that individual does not have the ability to make rational choices for himself.<sup>26</sup> Under *parens patriae*, the state

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22. See generally, PERLIN, *supra* note 21, at 58-136.

23. PERLIN, *supra* note 21, at 152-53 (footnotes omitted). For a critique of Massachusetts’s emergency involuntary civil commitment statute, see generally Marybeth Walsh, Note, *Due Process Requirements for Emergency Civil Commitments: Safeguarding Patients’ Liberty Without Jeopardizing Health and Safety*, 40 B.C. L. REV. 673 (1999). For an example of how a third party could use an emergency involuntary hospitalization procedure that required minimum “red tape” maliciously, see *Rent v. State*, 949 S.W.2d 418 (Tex. Crim. App. 1997). Rent requested that a probate judge approve an emergency detention of Rent’s ex-wife, because he claimed that he was afraid of her and that she was acting strangely, was not accepting reality, and had been violent before. *Id.* at 419. On the basis of Rent’s statement alone, the judge issued a warrant for Rent’s ex-wife’s immediate detention. *Id.* The police officer went to her home, found her eating “a normal family dinner,” and took her to the hospital. *Id.* A second-year psychiatric resident examined her and admitted her. *Id.* The next morning, a psychiatrist examined her, determined that she did not need treatment and that Rent had falsely caused her to be hospitalized, and released her. *Id.* A jury convicted Rent of intentionally causing an unwarranted commitment. *Id.* at 418.

24. WEINER & WETTSTEIN, *supra* note 21, at 47.

25. *Id.*

26. *Id.*

has the power to commit a mentally ill person who is “unable to care for himself” or who is “dangerous to himself.”<sup>27</sup> The second source of the state’s power to commit a person is the state’s police power.<sup>28</sup> The state has the authority to act for the public’s safety and welfare. In order to protect society, the state has the power to confine those who pose a danger to society, for example, a mentally ill person who is dangerous to others.<sup>29</sup>

## 2. *Due Process Requirements and Commitment*

Since 1816, some states have granted extensive due process rights to individuals in incompetency proceedings, including the right to counsel.<sup>30</sup> Today, all states require that the state notify the disabled person of the state’s intent to commit her.<sup>31</sup> Most states require a hearing<sup>32</sup> and make the patient’s presence at the hearing mandatory.<sup>33</sup> Although the Supreme Court has never explicitly defined which due process rights are mandatory for patients who are subject to involuntary civil commitment, the Court has clearly stated that

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27. *Id.*

28. *Id.*

29. *Id.* For a discussion of the inaccuracy of mental health professionals’ predictions of violence, see generally Donald N. Bersoff, *Judicial Deference to Nonlegal Decisionmakers: Imposing Simplistic Solutions on Problems of Cognitive Complexity in Mental Disability Law*, 46 SMU L. REV. 329, 355-57 (1992).

For an argument in favor of the *parens patriae* power and against the police power as justification for involuntary civil commitment, see Donald H. J. Hermann, *Barriers to Providing Effective Treatment: A Critique of Revisions in Procedural, Substantive, and Dispositional Criteria in Involuntary Civil Commitment*, 39 VAND. L. REV. 83 (1986). The author sees a trend of states relying solely on their police power to commit individuals, and thus requiring mental health professionals to make a prediction of future dangerousness before committing a person, as unfortunate. *Id.* at 97. He argues that this trend fails to recognize that mental illness can be incapacitating even when it is not causing a person to be dangerous. *Id.* Dangerousness alone is a defective standard because mental health professionals are unable to accurately predict dangerousness, or to treat it. *Id.* at 98. He maintains that states return to their *parens patriae* power and allow involuntary civil commitment of any person who is in need of mental health treatment but, because he or she is mentally ill, is unable to rationally decide if he or she needs treatment. *Id.* at 100.

30. WEINER & WETTSTEIN, *supra* note 21, at 42. For a discussion of the importance of the right to counsel in a commitment proceeding, see *id.* at 56. The authors argue that the right to counsel might be a person’s paramount right at a commitment proceeding. *Id.* Counsel safeguards the person’s rights, challenges the state’s case, and advocates for the client. *Id.* The authors note that “[w]ith few exceptions, state statutes specifically provide that a person is entitled to representation when civil commitment is sought.” *Id.*

31. *Id.* at 55.

32. As of 1988, all states except Colorado, Maryland, Nebraska, New York, and South Dakota, required a mandatory hearing for civil commitment unless the defendant waived the hearing. See AMERICAN BAR ASS’N, COMM’N ON THE MENTALLY DISABLED, *supra* note 19, app. at 102-06 tbl.5. Colorado required a hearing at the defendant’s written request. *Id.*

33. WEINER & WETTSTEIN, *supra* note 21, at 56.

Fourteenth Amendment due process rights do apply<sup>34</sup> and that commitment is a serious procedure with serious consequences.<sup>35</sup>

In *Addington v. Texas*,<sup>36</sup> the Supreme Court used the term “civil commitment proceeding” to refer to a procedure that would result in an individual “being involuntarily confined indefinitely.”<sup>37</sup> Thus, the Court did not include temporary and emergency “commitments” in its definition of “civil commitment.” The Court emphasized the “significant deprivation of liberty” that results from commitment and the “stigma” that commitment can impose on a person.<sup>38</sup> It explained the importance of carefully determining that a person has a medical need for commitment and is not simply exhibiting “abnormal” or “idiosyncratic behavior.”<sup>39</sup> The Court underscored the “weight and gravity” of a person’s interest in the consequences of

34. In *Specht v. Patterson*, 386 U.S. 605 (1967), the Supreme Court addressed Colorado’s Sex Offenders Act and held that “commitment proceedings whether denominated civil or criminal are subject . . . to the Due Process Clause.” *Id.* at 608. For an early example of the Supreme Court’s notice that states must use special care to preserve the due process rights of those the state attempts to commit, see *Minnesota ex rel. Pearson v. Probate Court*, 309 U.S. 270 (1940):

We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity or, as here, with a psychopathic personality as defined in the statute, and the special importance of maintaining the basic interests of liberty in a class of cases where the law though “fair on its face and impartial in appearance” may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings.

*Id.* at 276-77.

35. *O’Connor v. Donaldson*, 422 U.S. 563 (1975), involved a nondangerous civilly committed patient who the hospital refused to release for fifteen years. *Id.* at 608. The Supreme Court emphasized the high stakes involved in a commitment proceeding: “As we view it, this case raises a single, relatively simple, but nonetheless important question concerning every man’s constitutional right to liberty.” *Id.* at 573. The Court further explained:

A finding of “mental illness” alone cannot justify a State’s locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the “mentally ill” can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.

*Id.* at 575.

36. 441 U.S. 418 (1979).

37. *Id.* at 425. The Court wrote: “In considering what standard should govern in a civil commitment proceeding, we must assess both the extent of the individual’s interest in not being involuntarily confined indefinitely and the state’s interest in committing the emotionally disturbed under a particular standard of proof.” *Id.*

38. *Id.* at 425-26.

39. *Id.* at 426-27. The Court warned that at some point in everyone’s life, one exhibits strange behavior, “which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable.” *Id.* This strange conduct does not justify forced treatment or confinement. *Id.* at 427. But, the Court cautioned, a factfinder might mistakenly commit a person on the basis of “a few isolated instances of unusual conduct.” *Id.* The Court reasoned that it had to set the burden of proof in such a way as to underscore the significance of the commitment decision and to protect persons whose behavior is merely eccentric from improper commitments. *Id.*

involuntary commitment.<sup>40</sup>

Giving detail to the Supreme Court's broad affirmation of general due process rights, various district courts have held that patients have a right to counsel before commitment.<sup>41</sup> A significant majority of courts have held that under state law, persons have a constitutional right to an attorney at a civil commitment hearing.<sup>42</sup> In *Heryford v. Parker*,<sup>43</sup> the United States Court of Appeals for the Tenth Circuit held that patients had a constitutional right to counsel in a commitment proceeding.<sup>44</sup> The court relied on the Supreme Court's holding in *In re Gault*,<sup>45</sup> which held that a youth had a right to counsel in a delinquency proceeding because of the "awesome prospect of incarceration in a state institution."<sup>46</sup> The Tenth Circuit reasoned that whenever the state seeks to involuntarily confine a person, due process rights apply.<sup>47</sup> When the state relies on its *parens patriae* role of caring for the individual, then the state "has the inescapable duty to vouchsafe due process."<sup>48</sup>

40. *Id.* at 427. For further explanation of the grave consequences of commitment, see AMERICAN BAR ASS'N, COMM'N ON THE MENTALLY DISABLED, *supra* note 19, at 3. The commission explained:

The result of the civil commitment process is a massive deprivation of liberty. Individuals who are committed to inpatient facilities lose their freedom of movement, freedom of choice and often are given medication that may have serious side effects . . . . A well-run civil commitment process should ensure that respondents are placed in the least restrictive setting consistent with their needs.

*Id.*

41. *See, e.g.,* Lynch v. Baxley, 386 F. Supp. 378, 389 (M.D. Ala. 1974), *rev'd*, 651 F.2d 387 (5th Cir. 1981); Lessard v. Schmidt, 349 F. Supp. 1078, 1099 (E.D. Wis. 1972), *vacated and remanded*, 414 U.S. 473 (1974), *reinstated* 413 F. Supp. 1318 (E.D. Wis. 1976). The Supreme Court has not ruled that indigent defendants have a right to appointed counsel for civil commitment proceedings. In a related case, *Vitek v. Jones*, the Court held that a state must provide a prisoner with "qualified and independent assistance" before committing him or her to a mental institution. *Vitek v. Jones*, 445 U.S. 480, 497 (1980) (Powell, J., concurring).

42. AMERICAN BAR ASS'N, COMM'N ON THE MENTALLY DISABLED, *supra* note 19, at 12.

43. 396 F.2d 393 (10th Cir. 1968).

44. *Id.* at 396.

45. 387 U.S. 1 (1967).

46. *Heryford*, 396 F.2d at 395 (quoting *In re Gault*, 387 U.S. at 36-37).

47. *Id.* at 396.

48. *Id.* Scholars argue that in addition to the constitutional justification for due process rights in commitment proceedings, a desire for the correct outcome and for the individual who is taking part in the process to obey society's laws requires that the government follow due process safeguards in commitment proceedings. *See* Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433 (1992). The author argues that due process safeguards are vital in the civil commitment process not only because they ensure a more accurate outcome, but also because they have a positive psychological effect on the individual being committed. *Id.* at 445. Individuals who perceive their commitment proceeding to be fair will be more likely to accept and obey authority and follow society's rules. *Id.* at 443. He argues that this respect for societal authority is in fact one of the goals of the proceeding itself. *Id.* at 443-44.



### B. Statutory Construction

Because the Act does not define “committed,” courts must look elsewhere to interpret the term. One tool courts use is statutory construction. Each court’s method of statutory construction affects its interpretation of the term. The United States Court of Appeals for the Fifth Circuit drew on the rule of lenity when it reasoned that “committed” requires a formal civil commitment.<sup>49</sup> The rule of lenity requires that when an act is penal, it should be strictly construed and any ambiguities should be construed in favor of the defendant.<sup>50</sup> A corollary to the rule of lenity is that interpretations of ambiguous phrases in statutes should be informed by the professionals who are involved in that field,<sup>51</sup> by the way the term is actually used in practice,<sup>52</sup> and by the people who are affected by the statute.<sup>53</sup> The Supreme Court recently reaffirmed the validity of the long-standing<sup>54</sup> rule of lenity in *Jones v. United States*.<sup>55</sup>

Courts utilize the rule of lenity to prevent overly “expansive judicial interpretations [that] will create penalties not originally intended by the legislature” when legislative intent is ambiguous.<sup>56</sup> The justifications for the

49. *United States v. Giardina*, 861 F.2d 1334, 1337 (5th Cir. 1988).

50. 2B NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 59.03, at 102 (rev. 5th ed. 1992).

51. 2B NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 49:03, at 14-17 (West Group 6th ed. 2000). Singer explains: “Long-continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement, the courts and the public constitute an invaluable aid in determining the meaning of a doubtful statute.” *Id.* (footnote omitted).

52. *Id.* § 49:03, at 17. The author notes:

This rule of construction is closely related to the doctrine that statutes will be given their common and ordinary meaning, but such meaning must be justified through resort to extrinsic sources which relate to the operation of the statute in actual practice. In addition, the use of contemporary and practical interpretation provides certainty in the law and justifies reliance upon the conduct of public officials.

*Id.* (footnotes omitted).

53. *Id.* § 49:06, at 94. Singer explains: “The meaning attached by people affected by an act may have an important bearing on how it is construed.” *Id.* (footnote omitted).

54. *Id.* Singer states: “It is an ancient rule of statutory construction that penal statutes should be strictly construed against the government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed.” *Id.*

55. 529 U.S. 848, 912 (2000). The Court explained:

We have instructed that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity,” and that “when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.”

*Id.* (citations omitted).

56. SINGER, *supra* note 50, at § 59.03, at 102. The rule of lenity is a tool designed to ascertain Congress’s intent, so it applies only when there is no clear congressional intent otherwise apparent. *Id.*

rule of lenity include the reasoning that the defendant did not cause the ambiguity in the statute,<sup>57</sup> that, to ensure fairness, people ought to have “clear” notice of what type of actions are punishable,<sup>58</sup> and that the individual must be protected “against arbitrary discretion by officials and judges.”<sup>59</sup>

The Supreme Court applied the rule of lenity to another section of the Gun Control Act of 1968 in the landmark case *United States v. Bass*.<sup>60</sup> Later, in *Simpson v. United States*<sup>61</sup> the Court again applied the rule of lenity to the Gun Control Act of 1968.<sup>62</sup>

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57. *Id.* § 59.03, at 103.

58. *Id.* § 59.03, at 102-03.

59. *Id.* § 59.03, at 103 (footnote omitted). According to one commentator, the rule of lenity is especially applicable to this Act. See Robert Batey, *Techniques of Strict Construction: The Supreme Court and the Gun Control Act of 1968*, 13 AM. J. CRIM. L. 123, 137 (1986) [hereinafter Batey, *Techniques*] (warning of the danger of a complex statute encouraging authorities to make arbitrary decisions); Robert Batey, *Strict Construction of Firearms Offenses: The Supreme Court and the Gun Control Act of 1968*, 49 LAW & CONTEMP. PROBS. 163, 165 (1986) [hereinafter Batey, *Firearms Offenses*] (explaining that society has used gun control laws as a means of discrimination). For further discussion of Batey’s articles, see *infra* notes 197-99 and accompanying text.

60. 404 U.S. 336 (1971), cited in Batey, *Techniques*, *supra* note 59, at 137-38. The Court explained:

First, as we have recently reaffirmed, “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” In various ways over the years, we have stated that “when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.”

*Id.* at 347 (citations omitted).

The Court championed the rule of lenity based on two grounds. First, the rule of lenity ensures that the people who must obey the law are given notice of the law. *Id.* at 348. The law should be clear so that people are able to understand it and follow it. *Id.* Second, the rule of lenity ensures that the courts allow legislatures to define criminal conduct. *Id.* The Court reasoned that criminal statutes are especially important because they carry grave punishments and because a criminal conviction “usually represents the moral condemnation of the community.” *Id.* Because the consequences are severe when a legislature criminalizes an activity, the lawmaker has a responsibility to clearly define its intent. *Id.* The Court concluded that if the lawmaker is unclear, because of the harsh consequence of conviction, the courts must decide ambiguity in the defendant’s favor. *Id.* In *Bass*, the Court determined that “Congress has not ‘plainly and unmistakably,’ made it a federal crime for a convicted felon simply to possess a gun absent some demonstrated nexus with interstate commerce.” *Id.* at 348-49 (citations omitted).

61. 435 U.S. 6 (1978).

62. *Id.* at 14, cited in Batey, *Techniques*, *supra* note 59, at 149. In *Simpson*, the defendants were twice convicted of committing armed robbery. *Id.* at 89. At both trials, the court enhanced their sentences under 18 U.S.C. §§ 924(c) and 2113(d). *Id.* at 9. Both sections provided for enhanced sentences for defendants who used firearms when committing a federal felony. *Id.* at 10. The Court reasoned that Congress’s intent to allow both sections to provide cumulative sentence enhancement was unclear, and, in fact, one piece of legislative history favored the defendant. *Id.* at 15. The Court reaffirmed its adherence to the rule of lenity and explained that it would resolve statutory ambiguity in favor of the defendant. *Id.* at 14. The Court’s interpretation of the statute was superceded by the 1984 amendment of 18 U.S.C. § 924. *United States v. Holloway*, 905 F.2d 893, 894 (5th Cir. 1990).

### C. Legislative History of the Act

Although there is extensive legislative history for the Gun Control Act of 1968, there is sparse history on the §922(g)(4) prohibition against gun possession by a person whom the state “has . . . committed to a mental institution.”<sup>63</sup> A conference report on the bill<sup>64</sup> demonstrated, however, that Congress intended the prohibition to apply only to those persons whom the state had formally committed.<sup>65</sup> The various speeches by representatives showed a clear intent to keep guns away from people who are dangerous because of their mental illness,<sup>66</sup> but Congress did not discuss the definition of commitment. The metamorphosis of the statutory language documented in the conference report demonstrated Congress’s intention in its final word choice. In the original House bill, persons whom the state had “committed under a court order to a mental institution” could not buy a firearm.<sup>67</sup> The Senate version of the bill omitted the requirement of a court order.<sup>68</sup> The conference adopted the Senate language, not requiring a court order “inasmuch as mental boards and commissions constitute[d] the adjudicating or committing authority in some jurisdictions.”<sup>69</sup> The conference version of the Act retained the meaning of the original House version of the bill, requiring a formal—court ordered—commitment, with the added narrow exception that when commissions or mental boards play the same role as a court in a formal commitment in a state, a commission or board ordered formal commitment would be sufficient.<sup>70</sup>

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63. 18 U.S.C. §922(g)(4) (2000).

64. H.R. CONF. REP. NO. 90-1956 (1968), *reprinted in* 1968 U.S.C.C.A.N. 4426, 4429-30. The House managers’ conference report on the bill reads, in relevant part:

Under the House bill sales or other dispositions of firearms or ammunition to the following were prohibited: . . . (4) a person adjudicated in any court as a mental defective or committed under a court order to a mental institution.

. . .

Under the Senate amendment no prohibition was placed on sales or other dispositions . . . involving . . . mental defectives, or committed persons.

. . .

The conference substitute adopts the broader restrictions provided in the House bill and in the case of mental defectives and committed persons does not require that there be prior action by a court inasmuch as mental boards and commissions constitute the adjudicating or committing authority in some jurisdictions.

*Id.*

65. *Id.*

66. *See infra* notes 71-78 and accompanying text.

67. H.R. CONF. REP. NO. 90-1956 (1968), *reprinted in* 1968 U.S.C.C.A.N. 4426, 4429-30.

68. *Id.*, *reprinted at* 4430.

69. *Id.*

70. *See id.*

During speeches on the House floor, representatives stated their intention to keep guns away from “persons with records of mental instability,”<sup>71</sup> “the mentally unstable,”<sup>72</sup> people who are not “capable of using [guns] safely and legitimately,”<sup>73</sup> “mental incompetents,”<sup>74</sup> “the insane,”<sup>75</sup> “mental incompetents . . . and other irresponsibles,”<sup>76</sup> and “mentally irresponsible persons.”<sup>77</sup> One representative explained that “[t]his bill seeks to maximize the possibility of keeping firearms out of the hands of [‘mental incompetents’ [and] ‘persons with a history of mental disturbances’].”<sup>78</sup>

#### *D. Regulatory Definition*

In 1997, the Department of the Treasury, which includes the Bureau of Alcohol, Tobacco, and Firearms, adopted regulations defining the phrases “adjudicated as a mental defective” and “committed to a mental institution” under the Act.<sup>79</sup>

The Treasury interprets “committed to a mental institution” as:

A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.<sup>80</sup>

71. 114 CONG. REC. 22,270 (1968) (statement of Rep. Fino).

72. *Id.*

73. *Id.* (statement of Rep. Cohelan).

74. *Id.*

75. *Id.* at 21,834 (statement of Rep. Gallagher).

76. *Id.* at 21,832 (statement of Rep. Corman).

77. *Id.* at 21,780 (statement of Rep. Sikes).

78. *Id.* at 21,784 (statement of Rep. Celler).

79. 27 C.F.R. § 178.11 (2000).

80. *Id.* The regulations define “adjudicated as a mental defective” as follows:

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others; or  
 (2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

(1) A finding of insanity by a court in a criminal case; and  
 (2) Those persons found incompetent to stand trial or found 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.

27 C.F.R. § 178.11 (2000).

The regulations clearly require a “formal commitment” and expressly state that involuntary confinement for “observation” is not sufficient.<sup>81</sup>

#### *E. Supreme Court Interpretations of the Purpose of the Act*

The Supreme Court has never addressed the meaning of “committed” under the Act; however, the Court has explored the general congressional intent behind the Gun Control Act of 1968. In *Barrett v. United States*,<sup>82</sup> the Court inferred that the Gun Control Act’s structure revealed a broad congressional intent to keep guns away from “potentially irresponsible and dangerous” individuals.<sup>83</sup> In *Huddleston v. United States*,<sup>84</sup> the Court explained that “[t]he principal purpose of the federal gun control legislation . . . was to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.’”<sup>85</sup> Furthermore, the Court quoted the following congressional statement: “No one can dispute the need to prevent drug addicts, mental incompetents, persons with a history of mental disturbances, and persons convicted of certain offenses, from buying, owning, or possessing firearms. This bill seeks to maximize the possibility of keeping firearms out of the hands of such persons.”<sup>86</sup> The Court reiterated the rule of lenity but warned that clear congressional intent trumped overly strict construction.<sup>87</sup>

#### *F. Federal Courts: Commitment Under the Act*

Defendants have attacked their convictions under the Act on the grounds that their previous involuntary confinement to a mental institution, on which the conviction was based, was not a commitment within the meaning of the Act.<sup>88</sup> Other bases for attacking convictions under § 922(g)(4), such as subsequent cure of the danger and equal protection under the Fifth Amendment, have failed.<sup>89</sup>

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81. *Id.*

82. 423 U.S. 212 (1976).

83. *Id.* at 218.

84. 415 U.S. 814 (1974).

85. *Id.* at 824 (citations omitted).

86. *Id.* at 828 (quoting 114 CONG. REC. 21,784 (1968) (statement of Rep. Celler)).

87. *Id.* at 831.

88. *See, e.g.,* *United States v. Hansel*, 474 F.2d 1120, 1122 (8th Cir. 1973).

89. *See Dickerson v. New Banner Inst. Inc.*, 460 U.S. 103, 116 (1983). In *Dickerson*, the Supreme Court clearly stated that the present condition of a formerly mentally ill individual is irrelevant under the Act:

Throughout the history of the Act courts have used a two-part analysis to determine whether a defendant has been committed within the meaning of the Act.<sup>90</sup> First, courts determine how much deference to give to the language of the state law in determining whether a particular state procedure constituted a commitment under the Act.<sup>91</sup> Second, courts examine the congressional policy behind the Act to determine if the outcome under the first part of the analysis comports with that policy.<sup>92</sup> The first group of courts of appeals decisions after the passage of the Act that addressed the issue of the definition of commitment under the Act deferred to state law.<sup>93</sup> In recent years, however, courts of appeals have shifted the focus away from state law

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A person adjudicated as a mental defective may later be adjudged competent, and a person committed to a mental institution later may be deemed cured and released. Yet Congress made no exception for subsequent curative events. The past adjudication or commitment disqualifies. Congress obviously felt that such a person, though unfortunate, was too much of a risk to be allowed firearms privileges.

*Id.*

*See also* United States v. Jones, 569 F. Supp. 395 (D.S.C. 1983). In *Jones*, the defendant argued that the classification of persons who have been committed to a mental institution under §922(h)(4) (now incorporated into §922(g)(4)) of the Act violated equal protection under the Fifth Amendment of the Constitution because “it create[d] an invidious discrimination against all persons who have been ‘committed to any mental institution’ regardless of their present mental status and without any rational basis.” *Id.* at 396. The defendant also asserted “that persons within that classification [were] punished due to their status.” *Id.* at 398. The court responded that *the receipt of firearm* by a person of such classification constituted a violation of the statute rather than the classification itself. *Id.* (citation omitted). The court reasoned that “there is no absolute constitutional right of an individual to possess a firearm.” *Id.* (citations omitted). Thus, “the test of determining the constitutionality of 18 U.S.C. § 922(h)(4) depends on finding a rational basis for the particular classification. It is presumed that legislatures act advisedly and with adequate knowledge of existing conditions sought to be corrected by the legislation and that the legislative action is not arbitrary or unreasonable.” *Id.* (citations omitted). The court held that the classification was not “irrational, when considered in light of the Congressional intent to keep firearms away from persons considered as potentially irresponsible and dangerous.” *Id.* at 399.

90. *See, e.g.*, United States v. Giardina, 861 F.2d 1334, 1335 (5th Cir. 1988) (“Was [the defendant] committed under Louisiana law? If he was not, is that answer consistent with federal policy?”).

91. *Compare Giardina*, 861 F.2d at 1336 (carefully examining Louisiana state law to determine if the defendant’s involuntary hospitalization was a commitment under Louisiana law), *with* United States v. Chamberlain, 159 F.3d 656, 662-63 (1st Cir. 1998) (explaining that uniformity is one of the Act’s goals and that the definition of commitment “should not turn primarily on the label attached by the state legislature to its procedures, but rather on the substance of those procedures”).

92. *Compare Hansel*, 474 F.2d at 1125 (“If it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so.”), *with Chamberlain*, 159 F.3d at 664 (“In denying firearms to those ‘committed to a mental institution,’ Congress appears to have cast a wider net—to ‘maximize the possibility of keeping firearms out of the hands of [persons suffering from mental illness].’”) (citation omitted).

93. *See, e.g., Hansel*, 474 F.2d at 1122; *Giardina*, 861 F.2d at 1335.

and rule of lenity construction, and instead have sought to create a broad federal definition of commitment.<sup>94</sup>

### 1. *Deference to State Law*

In *United States v. Hansel*,<sup>95</sup> the United States Court of Appeals for the Eighth Circuit looked to the language of the state involuntary hospitalization statute and to congressional policy to determine that an observational hospitalization was not a commitment within the meaning of § 922(g)(4).<sup>96</sup> The county health board involuntarily hospitalized the defendant, Hansel.<sup>97</sup> Upon Hansel's admission, a doctor examined Hansel and decided that he did not "have a serious mental disorder, . . . [did not] need . . . hospitalization[,] . . . [and] was not a mental defective."<sup>98</sup> After his release, Hansel received a firearm and, during the transaction, certified that he had not violated the Act.<sup>99</sup> The government charged Hansel with violating the Act by receiving a gun after having been committed to a mental institution.<sup>100</sup> The Eighth Circuit held that Nebraska had not committed Hansel to the hospital, but rather it had admitted him for "observation."<sup>101</sup>

To decide whether Hansel had been committed, the court examined the language of Nebraska's involuntary hospitalization statute.<sup>102</sup> Nebraska had a two-part system for involuntary hospitalization.<sup>103</sup> First, the state could have the patient "temporarily hospitalized for psychiatric observation" under the direction of the County Mental Health Board.<sup>104</sup> Second, the state could have the individual "committed" upon certification to the Board by the hospital superintendent.<sup>105</sup> In Hansel's case the state failed to comply with the second step. In fact, the superintendent decided that Hansel had "no serious mental

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94. See *Chamberlain*, 159 F.3d at 662; *United States v. Midgett*, 198 F.3d 143, 146 (4th Cir. 1999).

95. 474 F.2d 1120 (8th Cir. 1973).

96. *Id.* at 1122-23.

97. *Id.* at 1122. The state hospitalized Hansel pursuant to 5 NEB. REV. STAT. § 83-328 (1971) (now repealed).

98. 474 F.2d at 1122.

99. *Id.* at 1121.

100. *United States v. Hansel*, 474 F.2d 1120, 1121 (8th Cir. 1973). The government charged Hansel under 18 U.S.C. § 922(h), which Congress later incorporated into § 922(g). See *supra* note 5. It also charged him with violations of 18 U.S.C. §§ 922(a)(6) and 924(a) for making the false certification on an application for firearms. 474 F.2d at 1122.

101. *Id.* at 1123.

102. *Id.* at 1123 (citing 5 NEB. REV. STAT. § 83-328 (1971)).

103. *Id.*

104. *Id.*

105. *Id.*

illness” and that the state did not need to hospitalize him.<sup>106</sup> Under the language of the Nebraska statute, the state had “authoriz[ed] the superintendent . . . to receive and keep [Hansel] . . . for a period of *observation*,” but the state had not “committed” him.<sup>107</sup> The court reasoned that Congress only intended to prohibit firearm possession by persons that the state had “committed,” not by those merely “hospitalized for observation and examination.”<sup>108</sup>

The court also held that Hansel had not been adjudged a mental defective under 18 U.S.C. §922(h), because the term “mental defective” refers to people who are mentally retarded, not to the mentally ill.<sup>109</sup> The court reasoned that sometimes “mental defective” is defined more expansively, but because the court had to “construe the statute narrowly,” it chose to give “mental defective” its ordinary meaning.<sup>110</sup>

Fifteen years after the Eighth Circuit’s holding in *Hansel*, in *United States v. Giardina*,<sup>111</sup> the Fifth Circuit agreed that the Act must be strictly construed

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106. *United States v. Hansel*, 474 F.2d 1120, 1123 (8th Cir. 1973).

107. *Id.* (quoting 5 NEB. REV. STAT. § 83-328 (1971)).

108. *Id.* The court reasoned:

If it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so. We can speculate that Congress desired to keep guns from all who had a history of mental illness and we might agree that such a policy would be desirable; but we can find no support for such a holding on our part.

*Id.* at 1125.

109. *Id.* at 1124.

110. *Id.* at 1125. For a discussion of the rule of lenity, see *supra* Part I.B.

In 1995 the Eighth Circuit again took up the meaning of “committed” in *United States v. Whiton*, 48 F.3d 356 (8th Cir. 1995). In 1990, defendant Whiton was “involuntarily admitted” to a hospital because he “was exhibiting bizarre behavior.” *Id.* at 357. Six days after Whiton’s admission, a Texas judge found Whiton mentally ill and committed him for a span of up to ninety days based on “certificates of medical examination from two psychologists who had examined Whiton.” *Id.* “After determining that Whiton was capable of participating in outpatient therapy, the Hospital discharged him” fifteen days later. *Id.* In 1993, Whiton purchased a rifle and stated on the Alcohol, Tobacco, and Firearms Form 4473 that “he had never been committed to a mental institution.” *Id.* A trial court convicted Whiton of violating the Act. *Id.*

The court reasoned that although the interpretation of “committed” was a question of federal law, the court should look to the state law for guidance because the hospitalization occurred under state law. *Id.* at 358. The court quickly resolved the question, reasoning that Whiton was involuntarily hospitalized under a Texas law that used the term “committed” and thus was committed under Texas law after a hearing. *Id.*

The court then explained that Whiton’s treatment under §922(g)(4) was not unconstitutional under either the equal protection clause or the substantive due process clause of the United States Constitution. *Id.* The court reasoned that Whiton was not “similarly situated to those persons who allegedly received favorable treatments,” specifically, the defendants in *Hansel* and *Giardina*. *Id.* The court reasoned that “[u]nlike Whiton, the defendants in both of those cases were neither adjudicated to be mentally ill nor were they ordered to be committed to a mental institution.” *Id.*

111. 861 F.2d 1334 (5th Cir. 1988).



and required formal commitment.<sup>112</sup> In 1984, Louisiana “admitted and detained [defendant, Giardina] . . . under an emergency certificate.”<sup>113</sup> The state held Giardina for two weeks and then released him.<sup>114</sup> Three years later, Giardina twice purchased a gun and signed Alcohol, Tobacco, and Firearms Form 4473, stating that he had never been committed to a mental institution.<sup>115</sup> The Fifth Circuit held that Giardina had not been committed under meaning of the Act and vacated his conviction.<sup>116</sup>

The court noted that the Act does not define the term “committed” and that there was no binding precedent on point.<sup>117</sup> Although the definition of the term was a question of federal law,<sup>118</sup> the Fifth Circuit reasoned that it could “seek guidance from state law.”<sup>119</sup>

To determine whether the state had committed Giardina within the meaning of the Louisiana law, the court undertook a detailed examination of the evolution of the language of Louisiana’s involuntary hospitalization statute.<sup>120</sup> In response to a Louisiana state court decision,<sup>121</sup> the Louisiana legislature had “conspicuously” eliminated the terms “committed” and “commitment” from its involuntary hospitalization statute except when referring to a “formal judicial commitment.”<sup>122</sup> The state had hospitalized Giardina under its admission by emergency certificate procedure.<sup>123</sup> The court reasoned that because the state legislature had consciously chosen to name that procedure an admission, not a commitment, an emergency admission was not a commitment under Louisiana law.<sup>124</sup> Unless such a conclusion was inconsistent with federal policy, Giardina had not violated the Act.<sup>125</sup>

In the second half of its opinion, the court examined the congressional

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112. *Id.* at 1337.

113. *Id.* at 1336 (citing LA. REV. STAT. § 28:53 (1985)).

114. 861 F.2d at 1334.

115. *Id.* at 1334.

116. *Id.* at 1337.

117. *Id.*

118. *Id.* at 1335. The court looked to a Supreme Court case interpreting another term in §922, *Dickerson v. New Banner Inst., Inc.* 460 U.S. 103 (1983). In *Dickerson*, the Court reasoned that “[w]hether one has been ‘convicted’ within the language of the gun control statutes is necessarily . . . a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State.” *Id.* at 111-12, quoted in *Giardina*, 861 F.2d at 1335.

119. *Giardina*, 861 F.2d at 1335.

120. *Id.* at 1336.

121. *Burns v. Genovese*, 211 So. 2d 336, 337 (La. Ct. App. 1968), *rev’d on other grounds*, 223 So. 2d 160 (1969).

122. *Giardina*, 861 F.2d at 1336 (citing LA. REV. STAT. § 28:52 (1977)).

123. *United States v. Giardina*, 861 F.2d 1334, 1334 (5th Cir. 1988).

124. *Id.* at 1336.

125. *Id.*

intent behind the Act. Because the Act is a criminal statute, the court reasoned that it must be strictly construed and the term “committed” must be given its “narrow meaning.”<sup>126</sup> The court agreed with the Eight Circuit’s opinion in *Hansel* that Congress showed no intention of prohibiting possession by those who have merely “been hospitalized for observation and examination, where they were found not to be mentally ill.”<sup>127</sup>

In 1994, in *United States v. Waters*,<sup>128</sup> the United States Court of Appeals for the Second Circuit considered whether involuntary admission constituted hospitalization by looking at the intent of the state legislature and attributing a broad congressional intent to § 922(g)(4).<sup>129</sup> In 1979, New York involuntarily hospitalized defendant Waters.<sup>130</sup> Under New York law,<sup>131</sup> Waters had an opportunity to receive a hearing if he requested one in writing, but he did not make such a request.<sup>132</sup> Waters was in “convalescent care” for approximately one month.<sup>133</sup> Sixty days after his admission, Waters requested that he be changed to voluntary status.<sup>134</sup> Seven months later, the hospital released Waters.<sup>135</sup> In 1991 the government indicted Waters for possessing firearms in violation of the Act.<sup>136</sup> The Second Circuit held that the state had committed Waters within the meaning of the Act.<sup>137</sup> The court followed the trend<sup>138</sup> of deferring to state law for a definition of

126. *Id.* at 1337 (quoting *Yates v. United States*, 354 U.S. 298, 310 (1957)). For a discussion of the rule of lenity, see *supra* Part II.B.

127. 861 F.2d at 1337 (quoting *United States v. Hansel*, 474 F.2d 1120, 1123 (8th Cir. 1973)). The court then reasoned:

In *Dickerson* the Supreme Court at least indicated the need for a formal, unequivocal action of commitment. Temporary, emergency detentions for treatment of mental disorders or difficulties, which do not lead to formal commitments under state law, do not constitute the commitment envisioned by 18 U.S.C. §922. An essential element of that federal offense is either a formal adjudication that a person suffers a mental defect, or a formal commitment, which latter, in the instance of Louisiana, requires formal action by the state district court.

*Id.*

128. 23 F.3d 29 (2d Cir. 1994).

129. *Id.* at 31-32.

130. *United States v. Waters* 23 F.3d 29, 30 (2d Cir. 1994). The state hospitalized Waters under section 9.27(a) of the New York Mental Hygiene Laws, which states in relevant part: “(a) The director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, accompanied by an application for the admission of such person.” N.Y. MENTAL HYG. LAW § 9.27(a) (1978).

131. N.Y. MENTAL HYG. LAW § 9.31(a) (1978).

132. *Waters*, 23 F.3d at 30.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* at 36.

138. See, e.g., *United States v. Giardina*, 861 F.2d 1334, 1336 (5th Cir. 1988) (deferring to state

commitment,<sup>139</sup> but it foreshadowed a trend to come<sup>140</sup> when it emphasized the broad reach of the Act instead of focusing on the rule of lenity.<sup>141</sup>

The court examined the history of the New York Mental Hygiene statute and determined that the state legislature intended the statute to be a commitment statute.<sup>142</sup> The Second Circuit noted that its conclusion was consistent with *Hansel* and *Giardina*.<sup>143</sup> Even though the procedure under which the state hospitalized Waters would not have constituted commitment under Nebraska or Louisiana law, under New York law, the procedure *was* a commitment.<sup>144</sup>

In addition, the court examined federal gun control policy. Because the legislative history was unhelpful,<sup>145</sup> the court turned to the general purpose of the Act as interpreted by the Supreme Court.<sup>146</sup> The court cited *Huddleston* for the proposition that Congress's broad goal in creating the Act was to prevent crime by keeping guns away from those who were potentially dangerous.<sup>147</sup> The court noted that the Act did not merely prohibit firearm

law); *United States v. Hansel*, 474 F.2d 1120, 1123 (8th Cir. 1973) (same).

139. *Id.* at 32.

140. *See, e.g.*, *United States v. Chamberlain*, 159 F.3d 656, 664 (1st Cir. 1998) (emphasizing that Congress intended to broadly prevent firearm possession by those who pose a potential risk).

141. 23 F.3d at 33.

142. *Id.* at 32. The court reasoned that because the state legislature continued to use the term "commitment" in one part of the Mental Hygiene law, the legislature intended the "admission" procedure under the law to be a "commitment." *Id.* The fact that many New York courts have referred to admission under N.Y. MENTAL HYG. LAW § 9.27 as commitment further supports the finding that the legislature intended an "admission" to be a "commitment." 23 F.3d at 33. The court also emphasized the procedural safeguards, such as the opportunity for a hearing, that are present in the New York admission system and held that these safeguards were sufficient under federal policy. *Id.* at 32, 35.

143. *Id.* at 33.

144. *Id.* The court reasoned that "[i]f . . . the appellant's detention had required, under state law, a judicial proceeding in order to determine whether he was to be retained, and this had not occurred, then, as in *Giardina* and *Hansel*, his hospitalization would not have constituted a 'commitment.'" *Id.* at 34. Under New York law, however, the state can "commit" a person without ever holding a formal judicial proceeding if the patient voluntarily chooses to remain in the hospital after the sixty-day temporary admission period. *Id.*

145. *Id.* at 34. The court explained:

The legislative history of the gun control statute states that it would be unlawful to possess a firearm under the statute if one has been formally committed pursuant to court order, H.R. REP. NO. 1577, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S.C.C.A.N. 4410, 4421, or committed by a mental health board or commission in jurisdictions where these bodies "constitute the adjudicating or committing authority." H.R. REP. NO. 1956, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S.C.C.A.N. 4426, 4429-4430. The legislative history cited by Waters does not address admissions procedures into mental health facilities which, in New York State, are based on a medical determination of an individual's need for hospitalization.

*Id.*

146. *Id.*

147. *Id.* (citing *Huddleston v. United States*, 415 U.S. 814, 824 (1974)).

possession by those who had proven that they were dangerous, but also prohibited possession “by those with a potential for violence as well.”<sup>148</sup> The court further explained that possession was prohibited by defendants under indictment “even though they [were] presumed innocent under the law,”<sup>149</sup> and by “[u]nlawful users of controlled substances, illegal aliens, and citizens who [had] renounced their citizenship.”<sup>150</sup> The court noted that “[a] perusal of the legislative history of the statute indicate[d] that Congress would broadly apply the prohibition against the ownership of firearms by ‘mentally unstable’ or ‘irresponsible’ persons.”<sup>151</sup> Under the Second Circuit’s interpretation of the Act, New York involuntarily hospitalizes only dangerous individuals under § 9.27, the very group Congress wants to prevent from possessing guns.<sup>152</sup>

## 2. *Towards a Federal Definition of Commitment*

In the late 1990s, the United States Courts of Appeals for the First and Fourth Circuits decided cases in which they parted company with their sister circuits. Instead of deferring to the state legislature’s definition of commitment, the First and Fourth Circuits sought to create a federal definition of commitment under the Act that was independent from the nuances of state law and that did not require a hearing.

In *United States v. Chamberlain*,<sup>153</sup> the First Circuit concluded that an

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148. 23 F.3d at 34.

149. *Id.* (citing 18 U.S.C. § 922(n) (1988)).

150. *Id.* at 34-35 (citing 18 U.S.C. §§ 922(g)(3), (g)(5), and (g)(7) (1988)).

151. *Id.* at 35 (citing 114 CONG. REC. 21,780, 21,791, 21,832, and 22,270 (1968)).

152. *Id.* The court held that Waters still presented a danger due to his continued fear of a Bureau of Alcohol, Tobacco, and Firearms plot and his stockpiling of weapons. *Id.* In any case, the court explained that “Congress made no exception for subsequent curative events. The past adjudication or commitment disqualifies . . . [because] such a person . . . [is] too much of a risk to be allowed firearms privileges.” *Id.* (quoting *Dickerson*, 460 U.S. at 116 (citations omitted)). Finally, the court noted that Waters had the opportunity for an administrative remedy in that he could apply for a discretionary waiver from § 922 (g)(4) from the Secretary of State under 18 U.S.C. § 925(c). 23 F.3d at 35. 18 U.S.C. § 925(c) states in relevant part:

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant 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. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial.

18 U.S.C. § 925(c) (2000).

153. 159 F.3d 656 (1st Cir. 1998).

emergency admission, without a hearing or legal representation, constituted commitment within the Act under a general federal definition of commitment.<sup>154</sup> Maine involuntarily hospitalized defendant Chamberlain in a mental hospital under the state's five-day emergency admission statute.<sup>155</sup> Before the five-day emergency period expired, Chamberlain voluntarily admitted himself and remained at the mental hospital for eight more days.<sup>156</sup> One year after he left the hospital, Chamberlain was arrested for possessing firearms.<sup>157</sup>

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154. *Id.* at 665.

155. *Id.* at 657 (citing ME. REV. STAT. ANN. 34-B §3863(1)-(3) (1988)). Two physicians examined Chamberlain and filed an emergency certification. A trial judge reviewed the certification and ordered that Chamberlain be admitted for a five day emergency detention. Upon Chamberlain's arrival at the hospital, a second physician examined him. *Id.* at 657.

In relevant part, ME. REV. STAT. ANN. 34-B § 3863(1)-(3) (1988), *quoted in Chamberlain*, 159 F.3d at 666-67, provides:

§ 3863 Emergency procedure

A person may be admitted to a mental hospital on an emergency basis according to the following procedures.

1. Application. Any health officer, law enforcement officer or other person may make a written application to admit a person to a mental hospital . . . stating:

A. His belief that the person is mentally ill and, because of his illness, poses a likelihood of serious harm; and

B. The grounds for this belief.

2. Certifying Examination. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical psychologist, stating:

A. The licensed physician or licensed clinical psychologist has examined the person on the date of the certificate; and

...

B. He is of the opinion that the person is mentally ill and, because of his illness, poses a likelihood of serious harm.

...

3. Judicial Review. The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace.

...

5. Continuation of hospitalization.

...

B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may seek involuntary commitment of the patient by filing an application for the issuance of an order for hospitalization under section 3864, except that if the hospital is a designated nonstate mental health institution and if the patient was admitted under the contract between the hospital and the department for receipt by the hospital of involuntary patients, then the chief administrative officer may seek involuntary commitment only by requesting the commissioner to file an application for the issuance of an order for hospitalization under section 3864.

*Id.*

156. *Chamberlain*, 159 F.3d at 657.

157. *Id.* at 658.

The court noted that the Act did not define commitment.<sup>158</sup> Drawing on earlier cases, the court explained that the definition of “committed” was a federal law question, although the court could “seek guidance from state law.”<sup>159</sup> The primary goal of the First Circuit’s interpretation of the term “committed” was to adhere to Congress’s intent in creating the Act.<sup>160</sup> To discover that intent, the court surveyed Supreme Court interpretations of the Act in *Dickerson* and *Huddleston*<sup>161</sup> and the legislative history of the Act.<sup>162</sup> The court noted that the ordinary meaning of the term “commitment” was “to place in or send officially to confinement . . . to consign legally to a mental institution.”<sup>163</sup>

Chamberlain argued that because the Maine legislature used the term “commitment” in title 34-B, section 3864 of the Maine Revised Statute and only used the term “admission” in section 3863, the legislature did not intend for a section 3863 emergency admission to constitute a commitment.<sup>164</sup> The court responded that the statute’s wording was vague and that Maine courts had sometimes used “commitment” to describe a section 3863 involuntary hospitalization.<sup>165</sup> It reasoned that even if the statute’s terminology clearly demonstrated that the legislature did not intend an emergency detention to be a commitment, the goal of national uniformity curtailed judicial deference to a state legislature’s wording.<sup>166</sup> Ultimately, the court declined to follow *Hansel* and *Giardina*.<sup>167</sup> The court held that whether a particular procedure constituted a commitment under the Act turned on the “substance” of the procedure, not the state legislature’s intent.<sup>168</sup> The First Circuit’s required

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158. *Id.*

159. *United States v. Chamberlain*, 159 F.3d 656, 658 (1st Cir. 1998) (quoting *United States v. Giardina*, 861 F.2d 1334, 1335 (5th Cir. 1988)).

160. 159 F.3d at 658 (citation omitted).

161. *Id.* at 660.

162. *Id.*

163. *Id.* at 661 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1971)).

164. *Id.* at 661-62. Chamberlain argued that the state had neither applied for nor been granted an “involuntary commitment order.” *Id.* at 657. The state would have had to bring commitment proceedings under ME. REV. STAT. ANN. 34-B § 3863(5)(B)(2) (1988) after five days if the institution had wished to continue to hold Chamberlain without his voluntarily acquiescence. ME. REV. STAT. ANN. 34-B § 3863(5)(B)(2) (1988), quoted in *Chamberlain*, 159 F.3d at 667.

165. *United States v. Chamberlain*, 159 F.3d 656, 661-62 (1st Cir. 1998).

166. *Id.* at 662.

167. *Id.* at 662-63.

168. *Id.* at 663. The court explained:

With all respect, we believe that the proper interpretation of the phrase, “committed to a mental institution,” should not turn primarily on the label attached by the state legislature to its procedures, but rather on the substance of those procedures. Thus, rather than focus on the nuances of state statutory language in interpreting “commitment,” we look at the realities of the state procedures and construe them in light of the purposes Congress sought to accomplish by prohibiting firearm possession by someone who has been “committed to a mental institution.” We

procedure did not include “provision of counsel, a full-blown adversary hearing, a finding by clear and convincing evidence that the person suffers from a mental illness, and a judicial order of commitment.”<sup>169</sup> The court reasoned that requiring those extensive safeguards would mean that any commitment would also meet the adjudication as a mental defective prong of the Act and thus render the two-part phrase of § 922(g)(4) redundant.<sup>170</sup> The court reasoned that Congress “cast a wider net” with the commitment prong of the Act than with the “adjudicated a mental defective” prong.<sup>171</sup> The court held that the affected person did not necessarily have to suffer from a mental illness to be targeted by Congress under the Act—the mere danger that the person was mentally ill was sufficient.<sup>172</sup>

A year after *Chamberlain*, in *United States v. Midgett*,<sup>173</sup> the Fourth Circuit followed the First Circuit by looking to common usage to determine the definition of commitment. In 1996, a court found Midgett incompetent to stand trial on charges of breaking and entering and confined him to a mental institution.<sup>174</sup> The hospital psychiatrist declared Midgett delusional and

ask whether identifying the state’s procedures for involuntary hospitalization as a “commitment” is reasonable and consistent with the federal policy underlying the firearms ban—namely, to keep firearms out of the hands of those who, if permitted to possess them, would pose a risk or potential for harm.

*Id.*

169. *Id.* at 664.

170. *Id.* *But see* *United States v. Hansel*, 474 F.2d 1120, 1124 (8th Cir. 1973) (explaining that mental defectiveness is defined as arrested development or subnormal intelligence but does not include mental illnesses); 27 C.F.R. § 178.11 (2000) (“The term [‘committed to a mental institution’] includes commitment for mental defectiveness *or* mental illness. It also includes commitments for *other* reasons, such as for drug use.”) (emphasis added).

171. *Chamberlain*, 159 F.3d at 664. (“In denying firearms to those ‘committed to a mental institution,’ Congress appears to have cast a wider net—to ‘maximize the possibility of keeping firearms out of the hands of [persons suffering from mental illness].’ (quoting 114 CONG. REC. 21,784 (1968) (statement of Rep. Celler)).

172. *Id.* The court explained:

Nor does it appear that Congress intended that only persons conclusively found to be suffering from mental illnesses or difficulties after having been afforded the fullest possible panoply of due process rights be deemed to have been “committed to a mental institution” for purposes of the firearms ban. That level of formality is not required for most of the categories Congress identified as within the firearms ban, including those who have merely been indicted a crime.

*Id.* (footnote omitted).

173. 198 F.3d 143 (4th Cir. 1999).

174. *Id.* at 144. The court involuntarily hospitalized Midgett under VA. CODE ANN. § 19.2-169.2 (Michie 1995). *Id.* at 144-45. VA. CODE ANN. § 19.2-169.2 states:

Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for treatment of persons under criminal charge . . . .

incompetent to stand trial, but found that he was not “dangerous to himself or others, and [was] capable of taking care of himself.”<sup>175</sup> Midgett pleaded *nolo contendere* and was allowed to leave the hospital and receive outpatient care.<sup>176</sup> Two years later, the government charged Midgett with violating the Act by possessing firearms.<sup>177</sup> The Fourth Circuit held that Midgett’s confinement, though not a formal commitment under Virginia law, met the “committed” prong of the Act.<sup>178</sup>

The court conceded that the Virginia legislature used the term “commitment” to refer to a “formal civil procedure” and that the legislature did not use the term “commitment” in the statute under which the state confined Midgett.<sup>179</sup> The court reasoned that the language of the Virginia statute did not bind it.<sup>180</sup> Instead, the court employed the *Chamberlain* substantive test to determine if Virginia’s procedure constituted commitment under the Act.<sup>181</sup> The court noted that in another federal statute Congress used the word “commit” to mean “hospitalization and treatment under circumstances such as these where, after a hearing, a judge finds the defendant mentally ill and incompetent to stand trial.”<sup>182</sup> Furthermore, the court explained that, “[g]iven Midgett’s proven history of mental instability, he is undoubtedly in that class of persons ‘who by reason of their status, Congress considered too dangerous to possess guns.’”<sup>183</sup>

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VA. CODE ANN. § 19.2-169.2 (Michie 1995).

175. *Midgett*, 198 F.3d at 145.

176. *Id.*

177. *Id.*

178. *Id.* at 146-47.

179. *Id.* at 146. The state involuntarily hospitalized Midgett under VA. CODE ANN. § 19.2-169.2 (Michie 1995). For the text of the statute see *supra* note 174.

180. *Midgett*, 198 F.3d at 146. (citation omitted). Under *NLRB v. Natural Gas Util. Dist.*, 402 U.S. 600, 603 (1971) and *Yanez-Popp v. INS*, 998 F.2d 231, 236 (4th Cir. 1993), in the absence of plain language directing application of state law, federal, not state, law governs the interpretation of the statute. *Midgett*, 198 F.3d at 145. Because § 922(g)(4) does not explicitly call for the application of state law—or of any law—to interpret the meaning of “committed,” “the question remains one of federal law.” *Id.* (citations omitted). Because the statute gives no definition of “committed,” the court applied its common usage. The court employed the dictionary definition of commitment, which is “to place officially in confinement or custody.” *Id.* at 146 (quoting AMERICAN HERITAGE COLLEGE DICTIONARY 280 (3d ed. 1997)). However, the court noted that Midgett was represented by counsel and a judge issued an involuntary hospitalization order based on evidence, so that whatever the “outer parameters” of the definition of “committed,” the procedure that Midgett underwent “[fell] squarely within any reasonable definition of ‘committed.’” *Id.* at 146. (footnote omitted).

181. *Id.*

182. *Id.* at n.4 (citing 18 U.S.C.A. § 4241(d) (West 1985)).

183. *Id.* at 146 (quoting *United States v. Dunford*, 148 F.3d 385, 388-89 (4th Cir. 1998)).



*F. Analogous State Law: Drafting Solutions to Ambiguity*

State gun control laws often mirror the statutory language of the Act. State approaches to analogous provisions offer possible solutions to the current disagreement in federal interpretation of the Act. In *Morris v. Blaker*,<sup>184</sup> the Supreme Court of Washington invalidated a Washington gun control law that failed to allow for curative events for individuals who had once been confined to a mental institution.<sup>185</sup> The court held that the state gun control statute was constitutional insofar as it denied gun rights to those confined to a mental institution.<sup>186</sup> The court concluded, however, that the act violated equal protection of the law by denying those who had been confined to a mental institution the same opportunity as violent felons to regain their gun rights by showing subsequent curative events.<sup>187</sup> The court went on to reason that, apart from the lack of opportunity for curative events, the state could constitutionally prevent those individuals who had been involuntarily committed from possessing firearms, but only because *formal* judicial commitment triggered the ban.<sup>188</sup>

While Washington State applied a 18 U.S.C. § 922(g)(4)-type prohibition only to those who had been formally committed and allowed for curative events, Idaho adopted the opposite approach. After the Attorney General of Idaho opined that Idaho's §922(g)(4)-type statute was unconstitutionally vague, the Idaho legislature subsequently enacted legislation that specifically stated that merely suffering from mental illness prevents gun ownership.<sup>189</sup>

184. 821 P.2d 482 (Wash. 1992).

185. *Id.* at 489-90.

186. *Id.* at 489.

187. *Id.* at 489-91.

188. *Id.* The defendant argued that the ban "unconstitutionally discriminate[d] against *all* former mental patients because *any* disqualification of former mental patients violates equal protection." *Id.* at 491. The court refused to determine whether strict scrutiny applied, because it defined commitment narrowly. *Id.* Moreover, the court decided that the statute applied only to individuals that the state had confined under Washington state's formal involuntary commitment law, WASH. REV. CODE § 71.05.320. *Id.* The court reasoned that because the firearms prohibition only applied to those whom the state had formally committed, the statute passed even strict scrutiny. *Id.* Furthermore, Washington had a "compelling state interest" in public safety authorizing it to prevent firearm possession by those that the state has formally committed: the state has "shown by clear, cogent and convincing evidence to present a danger to self or others, either by aggressive or passive behavior." *Id.* The court reasoned that such people "present a foreseeable risk" to public safety. *Id.* The court concluded:

The current statutory classification includes *only* those persons who have been judicially determined to be gravely disabled or to present a danger to themselves or others as a result of a mental disorder. The State has a compelling interest in keeping weapons out of the hands of persons who have been the subject of such a judicial determination.

*Id.*

189. 15 Op. Idaho Att'y Gen. No. 90-3 (1990). The Attorney General of Idaho responded to the request of the Fremont County Sheriff as to whether IDAHO CODE § 18-3302 was constitutional. *Id.*

### III. ANALYSIS

As explained above, the rule of lenity, adopted by the Supreme Court, requires that when an act is penal, a court should strictly construe the act and should construe any ambiguities in favor of the defendant.<sup>190</sup> The rule of lenity should apply to the Act. First, the Act is a penal act.<sup>191</sup> Second, for the rule of lenity to apply, an act must be ambiguous and without helpful legislative history.<sup>192</sup> The Act is ambiguous, as one congressman admitted during the Act's passage,<sup>193</sup> and as the courts of appeals demonstrated with their various interpretations of 18 U.S.C. § 922(g)(4).<sup>194</sup> The Act also has

The Attorney General concluded that the section was unconstitutionally vague. *Id.* The Attorney General asked: "What is a mental institution, and what is required to be considered to have been 'committed?'" *Id.* The Attorney General wondered whether the "stigma" of commitment was unending. *Id.* Looking to *United States v. Giardina*, 861 F.2d 1334 (5th Cir. 1988), the opinion noted that a formal commitment hearing might be required under the federal Gun Control Act. *Id.* It further noted that under Idaho law, a voluntarily patient at a mental institution has been "admitted," while an involuntary patient has been "committed." *Id.* (citing DAHO CODE § 66-317(b), (c) (1990)). The Attorney General concluded that the Idaho legislature intended the prohibition to only apply to formal, court-ordered commitments. *Id.*

IDAHO CODE § 18-3302 (Supp. 2001) in relevant part<sup>now</sup> reads:

(1) The sheriff of a county shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law, issue a license to the person to carry a weapon concealed on his person within this state for four (4) years from the date of issue. The citizen's constitutional right to bear arms shall not be denied to him, unless he: . . .

(f) Is currently suffering or has been adjudicated as follows, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210, Idaho Code; or

(ii) Mentally ill as defined in section 66-317, Idaho Code; or

(iii) Gravely disabled as defined in section 66-317, Idaho Code; or

(iv) An incapacitated person as defined in section 15-5-101(a), Idaho Code . . .

*Id.*

190. *See supra* Part II.B.

191. The sanction for violating the Act is a fine and the possibility of up to ten years of prison. 18 U.S.C. § 924(a)(2) (2000). The statute reads in relevant part: "Whoever knowingly violates subsection . . . (g) . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both." *Id.* This penalty goes beyond "mere redress to an individual for injuries received," and thus, the Act is a penal act. *See SINGER, supra* note 50, § 59.01 at 92 (rev. 5th ed. 1992).

192. *See id.* § 59.03, at 102.

193. 114 CONG. REC. 21,780 (statement of Rep. Sikes) (1968) ("[T]his bill contains serious weaknesses and should not be enacted in its present form. It is ambiguous, and there is no assurance that in its interpretation much more would not be read into the bill than ever was intended by its authors. It badly needs clarification, and limitations on its broad language must be spelled out . . . There are many . . . areas where the bill conveys too much authority, or where it is weak and requires clarification.").

194. *See, e.g.*, cases cited *supra* note 18. As the Eighth Circuit noted in *United States v. Hansel*, 474 F.2d 1120, 1125 (8th Cir. 1973). The Idaho legislature's solution in its gun control statute demonstrated how a statute could be written if the enacting body clearly wanted to prohibit gun ownership by the mentally ill, as well as by those who

little helpful legislative history pertaining to the definition of “committed” in § 922(g)(4).<sup>195</sup>

In addition to the common justifications for the rule of lenity,<sup>196</sup> there are other factors that demonstrate that the rule of lenity is especially applicable to this Act. As Professor Batey points out: “The complexity [of the Gun Control Act of 1968] provides a wide opportunity for innovation by federal law enforcement officers. The potential for arbitrariness that is inherent in such innovation in turn demands vigilance by courts reviewing the officers’ acts. Strict construction is one way to maintain this vigilance.”<sup>197</sup> Professor Batey further argues that strict construction of the Gun Control Act of 1968 is especially desirable to curb the arbitrariness of the authorities because in the past the government has used gun control laws “as a tool of discrimination.”<sup>198</sup> If courts use strict construction in interpreting the Gun Control Act of 1968, they will curb the ability of authorities to use the Act to target minority populations.<sup>199</sup> In the case of § 922(g)(4), gun control has the potential to discriminate against the mentally ill.<sup>200</sup> Finally, the rule of lenity

have been formally committed. *See supra* note 189 and accompanying text.

195. *See* *United States v. Waters*, 23 F.3d 29, 34 (2d Cir. 1994).

196. *See supra* notes 57-59 and accompanying text.

197. Batey, *Techniques*, *supra* note 59, at 137.

198. Batey, *Firearms Offenses*, *supra* note 59, at 165 (footnotes omitted).

199. *Id.*

200. Courts have shown favor for alleged stalkers over a person who is allegedly mentally ill. The First Circuit held that the government could prohibit a person from possessing a firearm if he was involuntarily hospitalized without a hearing. *United States v. Chamberlain*, 159 F.3d 656, 665 (1st Cir. 1998). Ironically, the First Circuit noted that persons subject to restraining orders for stalking are entitled to a hearing, among other things, before the Gun Control Act applies to them. *Id.* at 664-65 (citing 18 U.S.C. § 922(g)(8) (1994)). 18 U.S.C. § 922(g)(8) (2000) states, in relevant part:

(g) It shall be unlawful for any person—

...

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

....

to ship or transport in interstate or foreign commerce, or 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.

is particularly applicable to this Act because the Supreme Court has previously applied the rule to the Gun Control Act of 1968.<sup>201</sup>

Interpretations of ambiguous phrases in statutes should be informed by the professionals who are involved in that field, by the way the term is actually used in practice, and by the people who are affected by the statute.<sup>202</sup> Authorities in the field of mental health law differentiate between “regular” commitment and temporary or emergency admission.<sup>203</sup> Thus, the corollary of following the interpretation the experts in the field dovetails with the interpretation under the rule of lenity: the Act only addresses formal commitments. The Fourth Circuit in *Midgett* ignored the fact that commitment is a term of art in the mental health field when it simply looked up the verb “to commit” in the dictionary.<sup>204</sup> Following the usage in the field of mental health by professionals and by patients, the courts should construe commitment to mean formal commitment after a hearing.

Statutory interpretation under the rule of lenity and deference to experts in the subject matter aid the courts in reaching Congress’ intent. The legislative history of the Act, although sparse, indicates that Congress intended commitment under the Act to include solely formal civil commitments. The conference report on the Act<sup>205</sup> demonstrates that Congress intended § 922(g)(4) to only apply to people who had been judicially committed, unless that jurisdiction used a board or commission to play the judicial role.<sup>206</sup> Thus, a formal judicial-type hearing is required to trigger § 922(g)(4). The representatives made various references to their desire to keep guns away from those who are too dangerous to possess a gun due to mental instability.<sup>207</sup> The speakers addressed the need to prevent dangerous or incompetent people from possessing firearms, but never mentioned people who were merely *allegedly* incompetent.<sup>208</sup>

Congress drafted the “committed to a mental institution” prong of the Act to fashion a proxy for mental incompetency in the sense of being too

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*Id.*

201. See *Simpson v. United States*, 435 U.S. 6, 14 (1978); *United States v. Bass*, 404 U.S. 336, 347-49 (1971). See also discussion *supra* note 60 and accompanying text.

202. See *supra* notes 51-53 and accompanying text.

203. See *supra* note 21 and accompanying text.

204. *United States v. Midgett*, 198 F.3d 143, 146 (4th Cir. 1999). See *supra* note 180 and accompanying text.

205. H.R. CONF. REP. NO. 90-1956 (1968), reprinted in 1968 U.S.C.C.A.N. 4426, 4429-30. For full text see *supra* note 64.

206. *Id.* See *supra* note 64 and accompanying text.

207. See statements of various congressmen *supra* notes 71-78 and accompanying text.

208. See statements of various congressmen *supra* notes 71-78 and accompanying text.

dangerous to own a gun.<sup>209</sup> A person who is too dangerous to own a gun is someone who is dangerous to himself or others, which, pursuant to the Supreme Court's decision in *O'Connor v. Donaldson*,<sup>210</sup> is the criteria for formally committing a person.<sup>211</sup> During a formal commitment hearing, the adjudicator seeks to determine if a person is dangerous to himself or others. Because of this determination, a person who has been formally committed has the characteristic that Congress was targeting when it drafted the "committed" prong of the Act. Thus, to follow Congress's intention, courts should only prohibit gun possession by persons who have been formally committed.

Congress inserted the commitment prong of the Act to serve as a proxy for dangerousness, but to include emergency or observational commitments within the meaning of commitment under the Act would be overbroad. Under *O'Connor*, the state must demonstrate that a person is dangerous before it can commit her.<sup>212</sup> Therefore, formal commitment is a rational proxy for dangerousness. In contrast, one can get a temporary or emergency admission with relative ease.<sup>213</sup> Because states do not have to prove dangerousness at an adversarial hearing for emergency and observational admissions, these types of hospitalization are not good proxies for dangerousness and thus do not further Congress's aims.

A requirement of a formal commitment hearing with counsel is also consistent with the post-enactment regulations, which require formal commitment.<sup>214</sup> Although the regulatory definition of "committed to a mental institution" does not expressly mention emergency detention,<sup>215</sup> emergency detention is not "formal" commitment,<sup>216</sup> and thus the regulations exclude emergency detention from its definition of commitment.

The Supreme Court implicitly interpreted the term "commitment" to mean a *formal* commitment. In *Addington v. Texas*,<sup>217</sup> the Supreme Court used the term "civil commitment proceeding" to refer to a procedure that would result in the individual being "involuntarily confined indefinitely."<sup>218</sup>

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209. See statements of various congressmen *supra* notes 71-78 and accompanying text (stating intent to keep guns away from persons who are 'unstable,' 'irresponsible[],' 'incompetent[],' and unable to use guns 'safely and legitimately').

210. 422 U.S. 563, 575 (1975).

211. See *supra* note 35.

212. *O'Connor*, 422 U.S. at 575. See also *supra* note 35.

213. See *supra* note 23 and accompanying text.

214. 27 C.F.R. § 178.11 (2000). For statutory language see *supra* text accompanying note 80.

215. *Id.*

216. See *supra* note 21 and accompanying text.

217. 441 U.S. 418 (1979).

218. *Id.* at 425. The Court wrote: "In considering what standard should govern in a civil

Tacitly, the Court was not including temporary and emergency “commitments” in its definition of “civil commitment.”<sup>219</sup> In fact, the Court paid extensive attention that to both the importance of due process and the consequences of “commitment.”<sup>220</sup> This reliance demonstrates that the Court interpreted the term “commitment” to apply to the kind of long-term involuntary hospitalization to which it had prescribed a careful attention to due process rights.

The rules of statutory construction, the legislative history of the Act, and the Supreme Court’s interpretation of the term “commitment” indicate that courts should read the commitment prong of the Act to require a formal commitment. The Second Circuit in *United States v. Waters*<sup>221</sup> argued that the Act does not merely prohibit firearm possession by those who have proven that they are dangerous, but also prohibits possession “by those with a potential for violence as well.”<sup>222</sup> The court noted that possession is prohibited by defendants under indictment “even though they are presumed innocent under the law.”<sup>223</sup> But this argument is flawed. The Act prohibited a person from possessing a firearm while under indictment, before the person had been proven guilty. That prohibition was temporary, however. Eventually the court would find the person guilty, or the court or prosecutor would dismiss the charges. A person under indictment is not *perpetually* banned from gun possession because a grand jury indicted her. An emergency or temporary hospitalization is similar to an indictment; it is an intermediate step on the road to commitment, some other treatment, or no treatment at all. The emergency or temporary hospitalization is merely a temporary measure until the final outcome of the matter. If the final outcome is a formal civil commitment, then the Act applies.<sup>224</sup> If the final outcome is something less than commitment, then the Act does not apply.<sup>225</sup> It would be unfair to use a *temporary* stopgap measure—an emergency admission—as the trigger for a *permanent* prohibition on gun possession.

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commitment proceeding, we must assess both the extent of the individual’s interest in not being involuntarily confined indefinitely and the state’s interest in committing the emotionally disturbed under a particular standard of proof.” *Id.*

219. Temporary commitments are by definition short-term, and the Court assumed that the state could confine a patient “indefinitely” once it committed him or her. *Addington*, 441 U.S. at 425.

220. *See supra* notes 37-38 and accompanying text.

221. 23 F.3d 29 (2d Cir. 1994).

222. *Id.* at 34.

223. *Id.* (citing 18 U.S.C. § 922(n) (1978)).

224. 18 U.S.C. § 922(g)(4) (2000).

225. *Id.*

## IV. PROPOSAL

As the Act now stands, the courts should strictly construe the phrase “committed to a mental institution” in order to give effect to Congress’s intent and to protect the defendant under the rule of lenity. Commitment under the Act would entail only a formal commitment, and temporary involuntary hospitalizations would have only *temporary* effects. In the long term, Congress should rewrite the Act to define “committed” to include only those involuntary hospitalizations that entail the right to a hearing and counsel. Such a revision of the Act would preserve the due process rights of the allegedly mentally ill. Congress could substitute “person . . . who has been committed to a mental institution”<sup>226</sup> with “person who has been adjudicated to be dangerous to themselves or others and has been judicially involuntarily committed to a mental institution after notice and a formal hearing at which the person had the assistance of counsel and the right to be heard.”

If this proposal were followed, then Jane would return to her job as a bodyguard and the charge would be dropped,<sup>227</sup> as it should be if the government is to abide by the Supreme Court’s warning in *Addington*:

At one time or another every person exhibits some abnormal behavior which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable. Obviously, such behavior is no basis for compelled treatment and surely none for confinement . . . . Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior.<sup>228</sup>

*Clare Priest\**

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226. 18 U.S.C. §922(g)(4) (2000).

227. Under the proposed revision, Jane would be allowed to return to work. The revision requires a formal hearing, a finding of dangerousness, and the assistance of counsel. Jane was hospitalized without a hearing, without a finding of dangerousness, and without opportunity to have the assistance of counsel. *See text supra* Part I. If the examining physician had determined that Jane was a danger to herself or others, then the physician could have begun the formal commitment process. Had Jane been dangerous to herself or to others, then the court would have formally civilly committed her, and under the revised Act, she would have been unable to possess a firearm.

228. *Addington v. Texas*, 441 U.S. 418, 426-27 (1979).

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