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Mental Health Weapons Prohibition: Demographic and Psychiatric Factors in Petitions for Relief*

ABSTRACT: Federal law and most states prohibit possession of firearms by individuals with a history of certain psychiatric diagnoses and/or treatment. In California, an involuntary 72-h hold can trigger a 5-year ban on firearm possession. Individuals so prohibited may petition for early termination of the ban. We report on the demographic and psychiatric characteristics of a sample of individuals petitioning for early relief in Los Angeles County, and on the results of their petitions. The majority of petitioners were Caucasian men over age 40. Sixteen percent of petitioners were employed in law enforcement or armed security, and all of their petitions were granted. Individuals for whom there was greater evidence of mental disorder were significantly less likely to petition successfully. The results are discussed in terms of the benefits of involving a forensic expert in the petition process, which is not presently required under California law.

KEYWORDS: forensic science, forensic psychiatry, firearms, mental disorders, involuntary commitment

Under federal law, any person who has “been adjudicated as a mental defective or has been committed to any mental institution” is permanently prohibited from possessing firearms (1). Adjudication as a mental defective is defined as follows: “(i) 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 (a) is a danger to himself or to others; or (b) lacks the mental capacity to contract or manage his own affairs. (ii) The term shall include (a) a finding of insanity by a court in a criminal case and (b) 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” (2). Commitment to a mental institution is defined as follows: “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” (2) (italics added).

State laws concerning weapon possession by individuals with a history of mental illness vary widely. A few states, such as Alaska, Colorado, New Hampshire, and Vermont, have no specific laws in this area. Many states have statutes that resemble the federal law. At the other end of the spectrum, there are some states with broader restrictions on weapon possession following psychiatric treatment. For example, in the District of Columbia, Hawaii,

Illinois, Maryland, and Oklahoma, psychiatric diagnosis and/or voluntary treatment can be enough to trigger a prohibition on owning firearms. In other words, individuals who have never received involuntary psychiatric care may lose the legal ability to possess firearms in these jurisdictions.

California occupies an intermediate position between these jurisdictions and the more typical requirement of an involuntary commitment. In California, a 72-h involuntary hold for observation (under the provisions of Welfare and Institutions Code §5150 *et seq*) on grounds of danger to self or others, but not for grave disability, triggers a 5-year prohibition on weapons possession. As mentioned above, the federal law is specifically interpreted as excluding holds for observation.

Summaries of federal and state laws in this area have recently been published (3,4). One of these also includes a review of federal case law (4). A detailed summary of California statute and case law in this area has also been published (5).

California Welfare and Institutions Code §8103(f)(1) specifies that a person placed on a 72-h involuntary hold for observation on the grounds of danger to self or others and admitted to a psychiatric ward is subject to a 5-year prohibition on the possession of dangerous weapons including all firearms.

California’s 72-h hold does not meet the federal definition of a commitment (2); thus, individuals who have been on a 72-h hold but have not been subject to any longer period of involuntary treatment are not federally barred from possessing firearms. California’s law could be considered more stringent than federal law, in the sense that a shorter period of involuntary hospitalization is required to trigger weapon prohibition. This difference is perhaps counterbalanced to some degree by the fact that the California ban is only for a period of 5 years, as opposed to the federal lifetime ban.

Some of those who lose the ability to legally possess firearms as a result of being placed on a 72-h hold are employed in fields that require a firearm permit, e.g., law enforcement, private security, or the U.S. armed services. Thus, placing someone on an involuntary hold may have consequences for that patient’s livelihood.

The federal law and some but not all states allow individuals who are barred from possessing firearms on mental health grounds

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to petition for restoration of the right to possess firearms (4). California Welfare and Institutions Code §8103(f)(5) provides an opportunity to petition, once during the 5-year period, for early relief from the prohibition. To our knowledge, there has been no systematic investigation of the characteristics of individuals making these petitions, or of the outcomes of these legal actions.

Despite the fact that the 5-year ban occurs as the result of evaluation by a mental health professional, California law does not require the input of a mental health expert in the decision to restore the right to possess weapons. Granting or denying the petition for early relief is at the discretion of the judge. The standard to be applied is specified in §8103(f)(6): "The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner."

In some states, restoration of the right to possess firearms is dependent on certification by a physician that the individual no longer presents a danger as a result of mental illness (4). Typically this is the patient's treating psychiatrist or other physician. To our knowledge, no state currently requires examination by an independent forensic expert in the restoration process.

This study reports on the demographic and psychiatric features of a sample of petitioners in Los Angeles County. One object of the research was to determine the percentage of petitioners who required firearms for their employment, and examine the outcome of their petitions. A second goal of the study was to more generally identify factors correlated with the court's decision to grant or deny relief from the firearm prohibition.

Methods

In Los Angeles County, all firearm petitions are heard in Department 95, the mental health division of the Superior Court. This court has elected to have all petitioners undergo an examination by a forensic psychiatrist as part of the petition hearing.

Available court records for §8103(f)(5) petitions filed between January 2005 and October 2006 were reviewed. The court files for earlier petitions had been moved to off-site storage and were not available; however, a few cases which were originally filed in 2004 were also found on-site and were included in the analysis. The research protocol was approved by the presiding judge of the court. Data collected included age, sex, race, occupation (law enforcement/security vs. other), circumstances of admission, length of stay (including being placed on an involuntary 14-day hold for intensive treatment on the grounds of danger to self, danger to others, and/or grave disability [2]), diagnosis given by the admitting hospital, psychiatric history prior to the index episode, opinion of forensic examiner, and outcome of petition. No personally identifying information was recorded. Correlations between petitioner data and petition outcome were tested for significance using logistical regression.

Results

Demographic and Psychiatric Characteristics

Court records indicated that 153 petitions were filed between January 2005 and October 2006. An additional six cases originally filed in 2004 were also identified. A total of 60 case files containing sufficient information for analysis were located, with the remainder of the 2005–2006 cases either containing no demographic information (36 cases) or not able to be located in the court (63 cases). A subanalysis of 2006 cases indicated that only 17% of the cases which could not be located had been ruled on by the

TABLE 1—*Demographics and psychiatric diagnoses for a sample of individuals petitioning for early relief from mental health firearm prohibition in Los Angeles County.*

Age ($n = 57$)	41.9 ± 15*, range 18–79
Sex ($n = 57$)	
Male	49 (86%)
Female	8 (14%)
Race ($n = 57$)	
Caucasian	34 (60%)
African-American	6 (11%)
Hispanic	10 (18%)
Asian	4 (7%)
Other	2 (4%)
Occupation ($n = 57$)	
Law enforcement or security	9 (16%)
Other	48 (84%)
Primary hospital diagnosis ($n = 53$)	
Depression (any)	24 (45%)
Bipolar disorder	5 (9%)
Psychosis/dementia	6 (11%)
Alcohol or substance abuse	10 (19%)
Adjustment disorder	7 (13%)
No diagnosis	1 (2%)

*Years, mean ± standard deviation.

Total n is less than 57 for some categories due to missing information.

TABLE 2—*Circumstances of index admission for a sample of individuals petitioning for early relief from mental health firearm prohibition in Los Angeles County.*

Admission criteria ($n = 54$)	
Danger to self only	39 (72%)
Danger to others	15 (28%)
Firearm involved in admission ($n = 55$)	
Yes	14 (25%)
No	41 (75%)
14-day hold ($n = 57$)	
Yes	11 (19%)*
No	46 (81%)
Prior psychiatric history ($n = 55$)	
Yes	35 (64%)
No	20 (36%)

*Significantly less likely to receive a favorable recommendation ($p = 0.03$).

Total n is less than 57 for some categories due to missing information.

judge. In contrast, 49% of the case files which were located were ruled on. This suggests that the case files which were found are largely representative of the total set of petitions which were ruled on.

Three of the 60 cases were excluded because the petitioner's motion was granted on the basis that they had in fact never been hospitalized, leaving a total sample of 57 cases. The demographic and diagnostic characteristics of these individuals are displayed in Table 1. The circumstances of admission and past psychiatric history are presented in Table 2.

Petition Outcomes

One petition was automatically denied because a previous petition had been made and denied within the past 5 years. An additional eight petitions were withdrawn without evaluation by the forensic expert, leaving 48 petitioners who were evaluated.

Of these 48 petitions, the expert recommended that the petition be granted in 37 cases (77%), recommended denial in 10 cases (21%), and recommended postponement for further observation in one case (2%).

All cases where the expert recommended in favor were granted, as was one of the 10 for which denial was recommended. Of the remaining nine petitions receiving unfavorable recommendations, six were withdrawn or dismissed and three were denied by the court.

Factors Affecting Petition Outcome

Petition outcome was operationalized as examiner recommendation to restore or deny, as 14 of 57 petitions were withdrawn prior to a formal ruling by the judge (including six after examination), and there was a 97.6% concordance (40/41) between examiner recommendation and court ruling in the cases where a decision was made. No petitioner who received a favorable recommendation withdrew his or her petition, but six of 10 who received an unfavorable recommendation did so. The correlation between the demographic and psychiatric attributes of the petitioners and examiner recommendation was tested for significance using multivariate logistic regression with stepwise likelihood ratio. No demographic factors were significantly correlated with petition outcome. The only psychiatric factor which was significantly correlated with examiner recommendation was having continued to a 14-day hold ($p = 0.03$).

Discussion

In our sample, the typical individual petitioning for early relief from firearm prohibition in Los Angeles County was a Caucasian man around age 40. Overall, nearly 80% of petitions were granted. Sixteen percent of petitioners were employed in fields where possession of firearms was a requirement. All of their petitions were granted. Unipolar mood disorders, alcohol and substance abuse diagnoses, and adjustment disorders were the most common hospital diagnoses. Petitioners for whom there was greater evidence of mental illness, as evidenced by progression to a 14-day hold, were less likely to succeed.

State laws restricting access to firearms for individuals with a mental health history are proliferating (4–6). The effectiveness and fairness of such laws are the subject of controversy (2,4–7). In many jurisdictions, there is no requirement for evaluation by a mental health professional when courts assess the need for continued prohibition. We have presented data on the outcomes of petitions for relief from firearm prohibition when a mental health evaluation is required by the court. The results suggest that the involvement of a forensic mental health professional may enhance the decision-making process, as individuals with a greater burden of mental illness were less likely to have their firearm prohibition lifted.

In our sample nearly one in six petitioners was employed in law enforcement or armed security. All of their petitions were granted. The fact that firearm prohibition can have a major impact on employment or employability should be part of the debate on the appropriate parameters for laws establishing mental health firearm prohibitions, particularly in jurisdictions such as California where a firearm ban is triggered by an involuntary hold for observation that does not lead to any further commitment proceedings (a few states even ban firearm possession by individuals who have never received involuntary treatment—for example, in Illinois, any psychiatric hospitalization triggers a 5-year ban, and in Maryland, being treated as an inpatient for more than 30 consecutive days triggers an indefinite ban [5]).

The study has several limitations. The strength of the conclusions may have been weakened by the fact that 40% of the court files could not be located. Furthermore, diagnostic classification was

based on the records of the hospitalizations that triggered the prohibition and was not confirmed by other means, introducing a potential source of inaccuracy. There was no comparison group of petitions filed in California counties that do not employ a forensic expert in the hearing process, so no firm conclusions can be drawn about the benefits of a forensic evaluation, or about the potential drawbacks of leaving the decision solely to the discretion of the judge.

Mental health clinicians should familiarize themselves with the firearm laws in their jurisdiction. These laws have potential implications for their patients' employment status. There may be some circumstances, such as when a patient is ambivalent about a voluntary psychiatric admission, where an unnecessary involuntary hold could have unanticipated consequences for the patient.

In Los Angeles County, forensic psychiatrists with extensive experience in the area of criminal forensic psychiatry evaluate petitioners for relief from firearms prohibitions. The evaluation is similar to other types of risk or dangerousness assessments performed for the court system including determinations regarding civil commitment or suitability for probation. The evaluation consists of a review of records from the involuntary admission triggering the ban, a forensic psychiatric interview of the petitioner, and, if deemed necessary, contact with collateral sources such as family members or current treatment providers.

As mentioned previously, the specific question to be addressed under California law is whether or not the individual would be able to use firearms in a safe and lawful manner. This rubric encompasses risk of suicide and homicide, as well as other types of risk, for example the risk that a petitioner with memory impairment will accidentally leave a firearm where children may find it.

In the forensic arena, psychiatrists and psychologists who provide expert witness services have the potential to improve the quality of decision-making in legal proceedings where an individual is seeking the end of a prohibition on firearm ownership. It would be reasonable to assume that expert input and testimony in such proceedings would be likely to reduce the chance of errors, i.e., the unnecessary denial of petitions made by individuals at low risk and the granting of petitions made by individuals who appear safe but in fact pose a higher risk.

The findings reported here should be considered preliminary. Future research in this area could include prospective data collection of psychiatric risk factors using standardized rating scales such as the Brief Psychiatric Rating Scale (BPRS) (8), Psychotherapy Checklist-Revised (PCL-R) (9), or Historical and Clinical Risk Inventory (HCR-20) (10), as well as longitudinal follow-up of petitioners' subsequent psychiatric treatment and arrests. Such research would shed light on possible predictors of outcomes in cases involving restoration of firearm rights, and assist forensic evaluators in conducting their assessments.

Disclaimer

The views expressed in this article do not necessarily reflect any policy or position of the U.S. Department of Veterans Affairs, the University of Southern California, the USC Keck School of Medicine, or the University of California, Irvine.

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