Restoring Federal Firearms Rights for Wisconsin Residents

This article provides foundational principles and a viable strategy based on a successful test case for restoring the right to possess firearms under existing federal law for clients who have previously been involuntarily committed to a mental institution or who have been adjudicated mentally incompetent in Wisconsin or another state.

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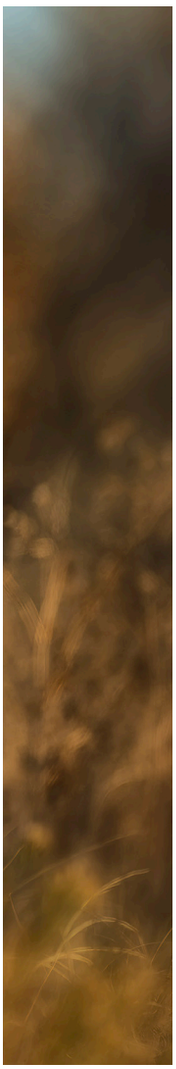

Under current federal law, several classes of persons are subject to lifetime ban of firearm ownership. One of these classes of persons, the subject of this article, is people who have been committed to a mental institution or otherwise adjudicated mentally incompetent. This article provides foundational principles and a viable strategy based on a successful test case for restoring the right to possess firearms under existing federal law for clients who have previously been involuntarily committed to a mental institution or who have been adjudicated mentally incompetent in Wisconsin or another state.[1] The operative laws include, among others, Wis. Stat. section 941.29(9), Wis. Stat. section 51.20(13)(cv)(2), and 18 U.S.C. § 925(c).

As of the time of this writing, the U.S. Attorney General has formed a task force to study the issue and make recommendations.[2] In the time since, a proposed rule has been issued that would, among other things, add a new rule to the Code of Federal Regulations — 28 C.F.R. part 107, Relief from Disabilities under the Gun Control Act.[3]

Statutory Backdrop and Procedure

The procedural mechanism for restoring the right to possess firearms is a petition for relief from disability (RFD) under Wis. Stat. chapter 51. This is appropriate only when it can be shown, by a preponderance of the evidence, that the person seeking restoration of the right to possess firearms is not likely to act in a manner dangerous to public safety and granting of the petition for the person would not be contrary to the public interest. Although de novo review on appeal is available if a circuit court misconstrues or misapplies the law, the convoluted interplay of state and federal law creates significant risk of the petition being denied, because a judge may understandably err on the side of caution.

Because of the likelihood that a circuit court judge may be unfamiliar with this area of law and uncertain whether the court has the authority to grant such a petition, the lawyer's role here is not only to advocate but also to educate the circuit court. Accordingly, this article discusses the procedural path, rather than the factual sufficiency to meet the burden of proof under the statute.

Jurisdiction. The attorney should start by informing the court of its jurisdiction. A short jurisdictional statement prefacing the petition will inform the court that the petitioner is a citizen of the county, that the circuit court is the proper forum and venue under Wis. Stat. sections 51.20 and 941.29(9), and that, pursuant to the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) certification of Wisconsin's RFD program under section 105 of the NICS Improvement Amendments Act (NIAA) (discussed below), the Wisconsin circuit court has subject-matter jurisdiction to grant the relief sought under both state and federal law.

Definitions. Federal law prohibits anyone "who has been adjudicated as a mental defective or who has been committed to a mental institution" from possessing firearms.[4] "Adjudicated as a mental defective" is defined as the following:

"A determination by a court, board, commission or other lawful authority that a person is a danger to himself or others or lacks capacity to contract or manage his affairs because of marked subnormal intelligence, or mental illness, incompetency,

condition or disease." The definition includes a person found to be insane by a court in a criminal case, or a person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 76b of the Uniform Code of Military Justice.[5]

"Committed to a mental institution" is defined as "[a] formal commitment of a person to a mental institution by a court, board, commission or other lawful authority." This includes commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness or for other reasons, such as for drug use, but does not include a person in a mental institution for observation or a voluntary admission to a mental institution.[6]

Prior to the regulatory decree, at least one court had defined the term *mental defective* narrowly as a person who "never possessed a normal degree of intellectual capacity," excluding persons with "faculties which were originally normal [but which] have been impaired by mental disease."[7] Now that the *Chevron* doctrine, which required federal courts to defer to an agency interpretation of law, has been overruled by *Loper Bright Enterprises v. Raimondo*,[8] lawyers might be able to question the regulatory interpretation by asserting that the Administrative Procedure Act requires a court to exercise its independent judgment in deciding whether an agency has acted within its statutory authority to fashion such an interpretation.

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Exception for Persons Granted Relief Through State Programs. There is, however, a much easier path than challenging an agency's definition of mental defective or civil commitment. This is because a mentally defective person or person civilly committed as defined under 18 U.S.C. § 922(g)(4) does *not* include a person who has been granted relief through a qualifying federal or state RFD program as authorized by the 2007 NIAA. Accordingly, a Wisconsin resident can regain firearm rights if granted relief by the BATF or under an approved state program that meets specified standards outlined in the NIAA.[9]

This is appropriate only when it can be shown, by a preponderance of the evidence, that the person seeking restoration of the right to possess firearms is not likely to act in a manner dangerous to public safety and granting of the petition for the person would not be contrary to the public interest.

Congress revoked funding for the BATF's statutory mandate to review and grant such petitions,[10] so that leaves only qualifying state RFD programs. Wisconsin has such a program. In some states that do not (for example, Washington), a prior civil commitment – no matter how long ago it occurred – operates as a lifetime revocation of the Second Amendment right to possess firearms.[11]

Under the NIAA, the Department of Justice (DOJ) provides NICS Act Record Improvement Program (NARIP) grants to improve states' infrastructure for collecting and submitting records to the National Instant Criminal Background Check System (NICS), including the records of individuals with prohibitory mental health records. To receive a NARIP grant, a state must certify that it has implemented a program in which individuals who have been adjudicated as having mental illness or disability or committed to a mental institution can apply for relief from the firearms disability imposed by such adjudication or commitment. Eligibility for NARIP grants requires RFD programs to be certified by the BATF as meeting the NIAA's specified restoration criteria.

A state RFD program that meets NIAA criteria must contain, at a minimum, provisions for application for relief from the federal prohibition on the purchase and possession of firearms through a state procedure or with due process, a judicial appeal of a denial of the initial petition, and updating of records by removing the person's name from state and federal firearms prohibition databases if relief is granted.[12] Section 105 of the NIAA provides that a state RFD program is considered "implemented" if the program 1) allows a person who has been prohibited from owning firearms pursuant to 18 U.S.C. § 922(g)(4) to apply to the state for relief from such disqualification; 2) provides that a state court or other lawful authority "shall grant the relief … if the circumstances regarding the disabilities … and the person's record and reputation, are such that the person 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"; and 3) permits a person whose relief application is denied to "file a petition with the State court of appropriate jurisdiction for a *de novo* judicial review of the denial." Section 105 further provides that if relief is granted to a person under such a state relief program, the adjudication or commitment in question is "deemed not to have occurred" for purposes of 18 U.S.C. § 922(g)(4).

Wisconsin's RFD program substantially conforms to section 105(a), requiring the circuit court to determine both whether an individual is likely to act in a manner dangerous to public safety and

whether a grant of the petition would not be contrary to the public interest. Wisconsin's RFD program was certified by the BATF in 2010.[13]

Civil Commitments and Adjudications from Other States

Thus far, the petitioning process might seem straightforward: If a court, acting pursuant to Wis. Stat. section 51.20(13)(cv)1., ordered a person not to possess a firearm at some point in the past, the person can petition that court or the court in the county where the person resides to cancel the order after making a showing that the person is not likely to act in a manner dangerous to public safety and that the grant of the petition would not be contrary to the public interest. Depending on the circumstances, the court may require a recent psychiatric evaluation, hear testimony from persons familiar with the petitioner, or require other offer of proof. But what if the person's civil commitment occurred in another state?

A civil commitment by order of a court pursuant to state law in *any* state triggers a ban on the right to possess firearms under federal law, regardless of whether the order specifies that the subject person may not possess firearms. But even for those states with a legislative scheme substantially similar to Wisconsin's, it would not have been an order issued under Wis. Stat. section 51.20(13)(cv)1., which Wisconsin's RFD statute can cancel. Accordingly, a Wisconsin circuit court might conclude that because there is no eligible order to cancel, the court has no authority to grant the petition. Moreover, because the effect of the federal law is to nullify the civil commitment as if it had never happened,[14] a Wisconsin court may be reluctant to seemingly vacate or void the judgment of a court in another state.

One approach to this dilemma is to rely on statutory construction, by pointing out that a Wisconsin civil commitment order and an order prohibiting firearms are indistinguishable for purposes of the petition. When a Wisconsin court orders a mental health hold with a finding of dangerousness to self or others, it is mandatory that the court also separately order that the person cannot possess firearms and must advise the person of the criminal consequences. At the time of this writing, only four other states do not have this explicit statutory-procedural prohibition when a civil commitment is ordered. (In Colorado, for example, the State Court Administrator is required only to notify the NICS via the Colorado Bureau of Investigation of any person subject to a mental health commitment for purposes of triggering notification and enforcement of the firearms prohibition.[15]) But the federal prohibition is triggered by the civil commitment, nonetheless.

To arrive at the conclusion that a civil commitment order and an order prohibiting firearms possession should be construed together, a court must give

Wisconsin's RFD statute "its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning."[16] Statutory language is "interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results."[17]

Using this approach, a petition under Wis. Stat. section 51.20(13)(cv)1m., for purposes of complying with the federal RFD program, is a petition that seeks relief from both Wis. Stat. section 51.20 (13)(cv)1. *and* Wis. Stat. section 51.20(13) (a)3. Indeed, an order under Wis. Stat. section 51.20(13)(cv)1. does not come into existence until triggered by a disposition under Wis. Stat. section 51.20 (13)(a)3. One does not exist without the other. Thus, a petition for the restoration of firearms that is prohibited by an order issued under Wis. Stat. section 51.20(13)(cv)1. is really a petition that goes to the heart of the original, albeit expired, civil commitment under Wis. Stat. section 51.20(13)(a)3.

Wis. Stat. section 51.20(13)(cv)1m., which incorporates Wis. Stat. section 51.20(13)(cv)3. by reference, is the statute regarded by the U.S. DOJ and the BATF (the agencies to which Congress gave rulemaking authority) as providing relief from disability under federal law – not just state court orders as authorized by state statute – as a condition precedent to receiving NARIP funds, and without regard to which court initiated the civil commitment or whether the commitment included language prohibiting firearms possession.[18] Indeed, Wisconsin's application for NARIP funding and its certification to the BATF,[19] citing Wis. Stat. section 51.20, is prima facie evidence that state officials construed and intended the state statute to provide relief from disability under federal law, not just state court orders as authorized by state statute. But, conflating these two Wisconsin statutes doesn't yet get us to where we need to be. A Wisconsin circuit court might question its authority to seemingly undo a civil commitment of another state and might believe that a petitioner needs to go back to the other state to seek relief.

Even though state law provides the modality for seeking relief, the ultimate goal is relief under federal law. In drafting the NIAA, Congress did not require that the state court that grants relief from disability be the same court that initiated the civil commitment. In fact, the eligibility requirements under the NIAA make no distinction as to to *where* the disability was originally imposed, but only which qualifying states have authority to provide relief.[20]

Interstate Compact on Mental Health. Fortunately, there is a mechanism by

which a Wisconsin circuit court, for purposes of determining subject-matter jurisdiction, should construe a civil commitment in another state as if it had been initiated under Wis. Stat. chapter 51, thereby vesting it with the authority to relieve the disability under federal law imposed by most other state courts: the Interstate Compact on Mental Health.

Wisconsin has entered into this interstate compact,[21] which exists among 45 states and the District of Columbia and was ratified by Congress in 1972 as Public L. No. 92-80. Once Congress approves an interstate compact, the compact is "transform[ed] ... into a law of the United States."[22] At that point, the compact is "not just an agreement, but federal law."[23] Because the Compact brings civil commitments under Wis. Stat. chapter 51 within its ambit, the Compact augments the state's remedy under Wis. Stat. section 51.20(13)(cv)1m. in applying to the federal prohibition.

The Compact's goals include setting the legal basis for higher quality and expedient responses to mental health issues in the states and prioritizing public safety and humanitarianism. The purpose of the Compact and enacting laws is intended to be achieved "irrespective of the legal residence and citizenship status of the person,"[24] and the Compact and enacting laws "shall be liberally construed so as to effectuate the purpose thereof."[25] Article III(a) of the Compact provides that, "Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness" or mental deficiency, the person shall be eligible for care and treatment in an institution in that state "irrespective of the person's residence, settlement or citizenship qualifications."

The Interstate Compact on Mental Health, unlike the interstate uniform acts, such as the Uniform Child Custody Jurisdiction and Enforcement Act, does not prescribe formal procedures or a triggering event for a foreign state court to "assume" jurisdiction (whereupon the home state is then divested of jurisdiction). Rather, states entering into the Compact share subject-matter jurisdiction over the person in need.[26] Accordingly, a civil commitment initiated in another participating state is treated the same as one originating in Wisconsin under Wis. Stat. chapter 51. And, for the reasons discussed above, a civil commitment order from another state whose statutes are substantially similar to Wisconsin's statutes – especially a state that participates in the Interstate Compact on Mental Health – should be treated as having the same federal and state legal effect as if the two separate civil commitment and firearms prohibition orders had issued in Wisconsin.

Both judicial economy and the interests of justice require that a court of the state where a petitioner resides is best suited to review a petitioner's record and reputation, determine credibility and demeanor, and – if the court were to find it necessary – require a petitioner to be reevaluated by a mental health professional in that same community, perhaps even a specific mental health professional trusted by the court. Requiring a Wisconsin resident to seek relief from the state in which a civil commitment or mentally-defective-individual adjudication arose, perhaps decades ago, undermines judicial economy and is more likely to lead to an unjust and uninformed result. Attorneys might consider including a statement to this effect in the petition.

Finally, the Wisconsin court almost certainly will want to review the original documents from the other state that led to the civil commitment or adjudication. Before an attorney files the petition, the attorney should have this file and be prepared to provide it to the court upon request.

Conclusion

Absent a federal agency rule change, such as the one pending at the time of this writing, there are very few options for certain categories of people who are subject to apparent lifetime bans on firearms ownership despite posing no danger to society. Fortunately, for Wisconsin residents who have previously lost this right because of a mental health crisis, including some for whom the incident occurred in other states, there is a procedural path for restoring these rights. **WL**

ENDNOTES

[1]Because proceedings under Wis. Stat. chapter 51 are confidential, the test case will not be made public.

[2]Memorandum, Off. of U.S. Att'y General, Second Amendment Enforcement Task Force (Apr. 8, 2025), https://www.justice.gov/d9/2025-04/ag-bondi-memo-second-amendment-enforcement-task-force.pdf.

[3] 90 Fed. Reg. 34394 (also available at https://www.federalregister.gov/documents/2025/07/22/2025-13765/application-for-relief-from-disabilities-imposed-by-federal-laws-with-respect-to-the-acquisition).

[4]18 U.S.C. § 922(g)(4).

[5] 27 C.F.R. § 478.11, "Mental defective" does not include a person whose adjudication or commitment was imposed by a federal department or agency, and: the adjudication or commitment has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision or monitoring; the person has been found by a court, board, commission or other lawful authority to no longer suffer from the mental health condition that was the basis of the adjudication or commitment, or has otherwise been found to be rehabilitated through any procedure available under law; or the adjudication or commitment is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission or other lawful authority, and the person has not been adjudicated as a mental defective consistent with 18 U.S.C. § 922(g)(4), except that nothing in this section or any other provision of law shall prevent a federal department or agency from providing to the Attorney General any record demonstrating that a person was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice. In 2014, the ATF introduced a proposed rule amending 27 C.F.R. § 478.11 to clarify that persons found not guilty by reason of mental disease or defect are included in the definition of "adjudicated as a mental defective." The rule was not finalized.

[6]27 C.F.R. § 478.11. "Mental institution" is defined as including "mental health facilities, mental hospitals, sanitariums, psychiatric facilities and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital." *Id.*

[7]*United States v. Hansel*, 474 F.2d 1120, 1124 (8th Cir. 1973); *see also United States v. Vertz*, 102 F. Supp. 2d 787, 788 (W.D. Mich. 2000) (rejecting *Hansel*'s definition in light of regulatory interpretation).

[8]603 U.S. 369 (2024).

[9]NICS Reporting Improvement Act, S.2192, 114th Congress (2015). See also the federal Firearms Owners Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986), which expanded the 1968 Gun Control Act statutes to include a process allowing those prohibited from firearms ownership on the basis of mental health exclusions to regain firearms ownership rights.

[10]*See* Treasury Department Appropriations Act, 1993, Pub. L. No. 102-393, 106 Stat. 1729, 1732 (1992) ("[N]one of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 USC 925(c).").

[11]*See Mai v. United States*, 974 F.3d 1082 (9th Cir. 2020). But see *Tyler v. Hillsdale County Sheriff's Department*, 837 F. 3d 678 (2016), for a very different result in the Sixth Circuit. *See also Keyes v. Lynch*, 195 F. Supp. 3d 702 (M.D. Pa. 2016) (finding 18 U.S.C. § 922(g)(4) unconstitutional, as applied).

[12]Bureau of Alcohol, Tobacco, Firearms, and Explosives: Certification of qualifying state relief from disabilities program. ATF E-Form 3210.12.

[13]See the current list at https://www.atf.gov/file/155981/download (last visited Nov. 14, 2025) (citing Wis. Stat. §§ 51.20, 51.45, 54.10, 55.12).

[14]See section 105 of the NIAA, which specifies that, if relief is granted under a state RFD program, the commitment is "deemed not to have occurred" for purposes of federal law.

[15]*See* Colo. Rev. Stat. § 13-5-102.

[16]*State ex rel. Kalal v. Circuit Ct. for Dane Cnty.,* 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110.

[17]*Id.* ¶ 46.

[18]See the current list at https://www.atf.gov/file/155981/download (last visited Nov. 14, 2025) (citing Wis. Stat. section 51.20, among other Wisconsin statutes).

[19]*See supra* note 12.

[20]*See* NIAA § 105(a)(2) ("a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person 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").

[21]*See* Wis. Stat. §§ 51.75-.80.

[22]*Texas v. New Mexico*, 462 U.S. 554, 564 (1983).

[23]*Kansas v. Nebraska*, 574 U.S. 445, 454 (2015); *see also New York v. New Jersey*, 598 U. S. 218 (2023) (holding that interpretation of interstate compact approved by Congress presents a federal question) (citing *Cuyler v. Adams*, 449 U. S. 433, 438 (1981)).

[24]*Wisconsin Blue Book 2015-2016*.

[25]Interstate Mental Health Compact art. XIV.

[26]See, for example, article V, which provides in pertinent part, "any court of competent jurisdiction in the receiving state may make such supplemental or substitute [guardian] appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances." **WL**