

STATE OF TENNESSEE

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Opinion No. 03-118

Issuance of Handgun Carry Permits to Persons Who Have Been Admitted to Hospitals or Other Institutions for Mental Evaluations but Subsequently Released Because Treatment was not Necessary

QUESTIONS

1. Does the term “committed to or hospitalized in a mental institution,” as used in Tenn. Code Ann. § 39-17-1351(c)(12), include situations where a person was admitted to a hospital or other facility for an evaluation to determine whether he or she is mentally ill or mentally defective but is subsequently released after it is determined that the person does not suffer from such an illness?

2. Does the seven year disqualification period in Tenn. Code Ann. § 39-17-1351(c)(12) apply to persons who have been evaluated for mental illness or defect within the past seven years but have not been treated for a mental illness?

OPINIONS

1. No. The term “committed to or hospitalized in a mental institution,” as used in Tenn. Code Ann. § 39-17-1351(c)(12) applies only to situations where a person has been admitted to a hospital or other institution after it has been determined that he or she suffers from a mental illness or other defect. It does not apply to situations where the person has been admitted to a hospital or other institution to be evaluated to determine whether he or she suffers from a mental illness or defect but has been released after it has been determined that such person does not suffer from a mental illness or defect.

2. No. The seven year period in Tenn. Code Ann. § 39-17-1351(c)(12), applies only to those persons who have been diagnosed as suffering from a mental illness or other defects and have been found by a court of competent jurisdiction to pose an immediate threat to themselves or others as a result of such illness.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1351(c) sets forth the eligibility requirements for obtaining a handgun carry permit in Tennessee. It provides, in pertinent part:

The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(12) That the applicant has not been adjudicated as a mental defective; has not been committed to or hospitalized in a mental institution; has not had a court appoint a conservator for the applicant by reason of a mental defect; has not been judicially determined to be disabled by reason of a mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years of the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in title 33, chapter 6, part 5, because of mental illness.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *State v. Garrison*, 40 S.W.3d 426 (Tenn. 2000). Such intent is to be found from a reading of the statute as a whole in light of legislative purpose. *Seiber v. Greenbrier*, 906 S.W.2d 444 (Tenn. 1995).

Tenn. Code Ann. § 39-17-1351(c) sets forth the grounds that will render a person ineligible to receive a handgun carry permit.¹ Taken as a whole, subsection (c) identifies the types of conduct which demonstrate that a person lacks the judgment, moral character or mental or intellectual capacity to be trusted to carry a loaded firearm in public. The term “committed to or hospitalized in a mental institution,” as used in Tenn. Code Ann. § 39-17-1351(c)(12), should thus be read to mean hospitalization for the purpose of treating a mental illness or defect as opposed to hospitalization for purposes of evaluation only.²

2. Tenn. Code Ann. § 39-17-1351(c)(12) provides a seven-year disqualification period in some situations. The relevant part states:

and has not, within seven (7) years of the date of application, been found by a court to pose an immediate substantial likelihood of

¹For example, convicted felons are not eligible to obtain a handgun permit. Tenn. Code Ann. § 39-17-1351(c)(6). Likewise, persons who are the subject of orders of protection, (c)(8), are fugitives from justice, (c)(9), are addicted to alcohol or controlled substances, (c)(9), or who were dishonorably discharged from military service, (c)(14), are not eligible to obtain handgun carry permits.

²Admission to a hospital or institution for evaluation for possible mental illness or other defect and a subsequent release after no such illness or defect is found indicates that someone might have had questions about a person’s mental state. It is well known that such questions can be raised for a number of reasons, including some that have nothing to do with the person’s mental capacity.

serious harm, as defined in title 33, chapter 6, part 5, because of mental illness.

Id.

By its literal terms, that clause relates to non-emergency involuntary admissions to inpatient treatment for mental illness. Under Tenn. Code Ann. §§ 33-6-502 and 503, a court may only commit a person to such treatment if it finds that he or she poses a danger to himself or herself or others because of a mental illness or emotional disturbance and if certificates of need from two healthcare providers have been filed in the commitment proceedings.³ Such a certificate may not be issued without a diagnosis of mental illness or emotional disturbance. Reading the relevant portion of Tenn. Code Ann. § 39-17-1351(c)(12) together with §§ 33-6-502 and 503 thus indicates that a person cannot be rendered ineligible to obtain a handgun carry permit under Tenn. Code Ann. § 39-17-1351(c)(12) without a diagnosis of mental illness or emotional disturbance.

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³ Tenn. Code Ann. § 33-6-503 states, in relevant part:

No defendant may be judicially committed under this part unless:

(1) Two (2) licensed physicians; or

(2) One (1) licensed physician and one (1) licensed clinical psychologist qualified as provided in § 33-6-427(a);

filed in the commitment proceeding certificates of need for care and treatment certifying that the defendant satisfies the requirements of § 33-6-502(1)-(4) and showing the factual foundation for the conclusions on each item.