April 7, 2014

Attorney General Eric Holder
c/o George M. Fodor
Room 6.N-523
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226


File # 2010R-21P

Dear Attorney General Holder:

The American Psychiatric Association (APA), the medical specialty society representing more than 35,000 psychiatrists nationwide, respectfully submits these comments to the Department of Justice’s (DOJ’s) request in its January 7, 2014, notice of proposed rulemaking (the NPRM), addressing whether certain categories of persons should be prohibited from receiving, possessing, shipping, or transporting firearms under the Gun Control Act of 1968 (the Act).

In the NPRM, the DOJ proposes to amend the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulations to clarify definitions of “adjudicated as a mental defective” and “committed to a mental institution,” two classes of individuals who are prohibited from receiving, possessing, shipping, or transporting firearms under the Act. The NPRM specifically requests public comment regarding whether the term “adjudicated as a mental defective” includes an adjudication that occurred when the person was under the age of 18. The NPRM also requests public comment concerning whether the statutory term “committed to a mental institution” includes an involuntary commitment that occurred when the person was under the age of 18. The APA recognizes the critical public health need for action to promote safe communities and reduce mortality due to fire-arm related violence, but cannot support any amendment to the terms “adjudicated as a mental defective” and “committed to a mental institution” that would include references to events that occurred when an individual was under the age of...
18, or still legally a child. The consequence of these amendments would result in persons who were adjudicated or involuntarily committed prior to the age of 18 being reported under the federal mental health prohibitor to the National Instant Criminal Background Check System (NICS).

For the reasons set forth below, we oppose any amendment to the definition of “adjudicated as a mental defective” or the definition of “committed to a mental institution” that would include adjudications or involuntary commitments that occurred prior to the time an individual was 18 years of age. Such a revision to these definitions would be inappropriate, since it does not take into account clinical and developmental realities and how access to mental health care often occurs for children.

Reporting is a fixed event that marks a person for life while the clinical and developmental realities for persons under 18 are, in fact, dynamic, and the psychiatric issues they experience are often transitory. A policy that would designate a permanent status to an individual in this age group ignores this reality.

The role of mental disorders in violence is often misunderstood. Mental disorders are far more closely linked to suicide than to homicide. Diagnosable mental disorders are present in an overwhelming proportion of people who commit suicide. However, the best available data suggest that only 3-5% of acts of violence toward others in our communities are attributable to people with diagnosed mental disorders, and only a tiny percentage of such acts (2-3% in a major study) involve guns.

Each year, thousands of children and adolescents across the United States are diagnosed with a mental health disorder. As a child develops, a mental health clinician’s assessment of the child’s mental health can change. Adolescents behave differently because their brains are not fully developed and exhibit functional differences from mature, adult brains. Recent research has demonstrated that the brain continues to change and develop throughout the teen years and into early adulthood. Studies indicate that the adolescent period poses vulnerabilities to risk-taking behavior but, importantly, that this is a temporary stage. As a result, adolescents are more likely to respond impulsively, utilizing a more primitive part of their brain, and are more likely to act out in ways that may cause them to be involuntarily committed to a mental institution or deemed mentally defective. The evaluation of a child with a behavioral disorder is difficult, and a childhood diagnosis of a mental health disorder will not necessarily characterize the individual’s health once he or she reaches adulthood. In fact, treatment in childhood for mental health issues may well increase the likelihood that an individual will reach adulthood without the kind of serious mental health issues that should be reportable to NICS. To permit or mandate the reporting of adjudications as to an individual’s mental health status or any involuntary commitments that occur in childhood or adolescence creates a disconnect between an individual’s capacity to recover from a mental health diagnosis through the receipt of mental health treatment and the transitory nature of many childhood mental disorders and society’s intention that NICS be a repository for the identities of persons who currently pose a threat to themselves or society if permitted to purchase a firearm.

Reporting an individual to NICS is a fixed event while the clinical and developmental realities for persons under 18 are dynamic and the psychiatric conditions they manifest are often transitory. Being reported to NICS for an adjudication or involuntary commitment that occurs
while an individual is a child or adolescent can be stigmatizing for a child while still a child, as well as when he or she becomes an adult. A policy that would facilitate a designated status to an individual in this group ignores the realities.

Often, an involuntary commitment of a child or adolescent is the result of a parent’s anxiety rather than the severity of the child’s condition. Commitment does not necessarily suggest a likelihood that the child or adolescent may actually have, or forever have, some propensity for self-harm or harm to others. A child’s ability to pursue work in law enforcement, serve as a federal judge, be a teacher, or in any other profession necessitating a perfect legal record and no report to NICS should not be forfeited as a consequence of events that may have been in response to parental anxiety or a disorder that often resolves with treatment and age.

For all the reasons given above, we strongly recommend the definition of “adjudicated as a mental defective” and “committed to a mental institution” not be expanded to include adjudications and involuntary commitments that occurred prior to a person turning the age of 18. The negative consequences of reporting the adjudications and involuntary commitments one receives as a child or adolescent to NICS under the federal mental health prohibitor far exceed any value to society that can come from doing this. Just as we protect children who have been found guilty of committing crimes before the age of 18 from entering adulthood with a criminal record, we must protect children who have had mental health issues from being stigmatized by them into adulthood by having them reported to NICS.

We appreciate this opportunity to share our concerns with the DOJ. If you should have any questions about our position, please contact Kristin Kroeger, APA’s Chief of Policy, Programs and Partnerships a kkroeger@pscyh.org.

Sincerely,

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CEO & Medical Director