

**STATE OF TENNESSEE**  
OFFICE OF THE  
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August 13, 2008

Opinion No. 08-133

Issuance of Handgun Carry Permits to Persons Suffering from Post Traumatic Stress Disorder

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**QUESTION**

Can a person who has been diagnosed as suffering from Post Traumatic Stress Disorder (PTSD), but who has not been adjudicated or hospitalized for a mental illness or because of mental incompetence, obtain a handgun carry permit?

**OPINION**

Yes. Under Tenn. Code Ann. § 39-17-1351(c)(12), as it is presently written, a person who has been diagnosed with PTSD may obtain a handgun carry permit, as long as that person has not been adjudicated as mentally defective, been committed or hospitalized, or been judicially determined to pose a substantial risk of harm because of PTSD.

**ANALYSIS**

Applicants for handgun carry permits must complete a standard form and submit it to the Department of Safety. That form requires applicants to answer a series of questions and to state, under penalty of perjury, that the answers are true. Tenn. Code Ann. § 39-17-1351(c).<sup>1</sup> Subsection (c)(12) asks whether an applicant has a history of certain types of mental illness or incompetence. Specifically, it asks the applicant to affirm:

[t]hat 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 mental illness, developmental disability or other mental incapacity; and has not, within seven (7) years from 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.

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<sup>1</sup>Tenn. Code Ann. § 39-17-1351(c), sets forth the qualifications that an applicant must satisfy to obtain such a permit. All of the matters set forth in that statute are intended to enable the Department of Safety to determine whether the applicant satisfies the age, mental health and other requirements to carry a handgun.

Tenn. Code Ann. § 39-17-1351(c)(12).

The primary objective of statutory construction is to ascertain and give effect to the intention of the legislature. *Auto Credit of Nashville v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007).

The language of Tenn. Code Ann. § 39-17-1351(c)(12) clearly and unambiguously requires an adjudication of mental illness, incompetence or disability, or commitment or hospitalization in a mental institution before a person may be denied a handgun carry permit because of mental illness or incapacity. Under Tenn. Code Ann. § 39-17-1351, as it is presently written, a person who has been diagnosed as suffering from PTSD may lawfully obtain a handgun carry permit unless he or she has been adjudicated as mentally ill or incapacitated, or has been hospitalized or committed to a mental institution based on such diagnosis.<sup>2</sup>

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<sup>2</sup>In addition to satisfying the requirements set forth in Tenn. Code Ann. § 39-17-1351(c), an applicant for a handgun carry permit must also show that he or she is not prohibited from owning or possessing a firearm under federal law. Tenn. Code Ann. § 39-17-1351(b). 18 U.S.C. § 922(g)(4) regulates ownership or possession of firearms based on mental illness or incompetency. Subsection(g)(4) states, in pertinent part:

(g) It shall be unlawful for any person –

\* \* \*

(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 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.

18 U.S.C. § 922(g)(4). Under the plain language of the federal statute, a person is prohibited from owning or possessing a firearm based on mental illness or incompetency only if he or she has been adjudicated as mentally ill or incompetent or has been committed to a mental hospital or institution.

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