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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable D.T. Marshall
Montgomery County Sheriff
115 South Perry Street
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Firearms – Mental Health – Sheriffs –
Pistol Permits – Law Enforcement Officers

Alabama law does not prohibit a person of unsound mind from possessing a long-gun if the barrel thereof is 12 inches or more in length.

A sheriff is prohibited from issuing a pistol permit to a person of unsound mind.

Whether a person diagnosed with Post Traumatic Stress Disorder is of unsound mind, and therefore forbidden to possess a pistol, is a factual question that this Office cannot answer.

A sheriff may deny a pistol permit application if the sheriff has a reasonable suspicion that the applicant may use a weapon unlawfully or in such other manner that would endanger the applicant's self or others. In making this determination, a sheriff may consider the factors set forth in section 13A-11-75 of the Code of Alabama.

The diagnosis of a law enforcement officer with Post Traumatic Stress Disorder does not affect the right of the officer to lawfully possess a firearm unless the disorder is of such a nature as to render the officer of unsound mind.

Dear Sheriff Marshall:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

- (1) Does a diagnosis of Post Traumatic Stress Disorder (“PTSD”) affect a person’s right to possess a firearm?
- (2) Does a diagnosis of PTSD disqualify a person from the issuance of a pistol permit pursuant to section 13A-11-75 of the Code of Alabama?
- (3) Does a diagnosis of PTSD affect the legality of a law enforcement officer’s ability to legally carry a firearm?

FACTS AND ANALYSIS

The American Psychiatric Association describes PTSD as a mental disorder, the essential feature of which “is the development of characteristic symptoms following exposure to one or more traumatic events.” American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 274 (5th ed. 2013). The symptoms and severity of PTSD vary widely among individuals.

Frequently, an individual’s reaction to a trauma initially meets criteria for acute disorder in the immediate aftermath of the trauma. The symptoms of PTSD and the relative predominance of different symptoms may vary over time. Duration of the symptoms also varies, with complete recovery within 3 months occurring in approximately one-half of adults, while some individuals remain symptomatic for longer than 12 months and sometimes more than 50 years. Symptom recurrence and intensification may occur in response to reminders of the original trauma, ongoing life stressors, or newly experienced traumatic events. For older individuals, declining health, worsening

cognitive functioning, and social isolation may exacerbate PTSD symptoms.

Id. at 277.

Your questions essentially ask what effect, if any, a diagnosis of PTSD has upon a person's right to possess a firearm. At the outset, it should be noted that, for purposes of this discussion, there are two types of firearms: pistols and non-pistols ("long-guns"). A pistol is "[a]ny firearm with a barrel less than 12 inches in length." ALA. CODE § 13A-11-70(1) (Supp. 2013). Conversely, a long-gun is any firearm with a barrel length of 12 inches or more. *Id.* With this distinction in mind, Alabama law does not prohibit a person with a mental disorder, including PTSD, from possessing a long-gun, i.e., shotgun, rifle, or assault weapon, as long as the barrel thereof is 12 inches or more in length.

Although this Office does not issue opinions interpreting federal statutes, federal law does, generally, prohibit a person who "has been adjudicated as a mental defective or who has been committed to any mental institution" from possessing a firearm. 18 U.S.C.A. § 922(g)(4) (West 2014); *see* ALA. CODE § 22-52-10.8 (Supp. 2013) (requiring probate judges to forward commitment orders to the Criminal Justice Information Center, but only if evidence was presented that the person has shown a history of inappropriate use of firearms); *see also*, ALA. CODE § 13A-11-75(a)(1)a (Supp. 2013) (sheriff may not issue pistol permit to person who is prohibited from the possession of a pistol pursuant to state or federal law.)

With respect to pistols, section 13A-11-76 of the Code of Alabama states that "***[n]o person shall deliver a pistol to any person*** under the age of 18 or to one who he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, an habitual drunkard or ***of unsound mind.***" ALA. CODE § 13A-11-76 (2006) (emphasis added). A sheriff may not issue a pistol permit to a person who, by operation of law, is prohibited from possessing a pistol. *E. M. v. State*, 675 So. 2d 90, 92 (Ala. Crim. App. 1995); opinion to Honorable David T. Marshall, Montgomery County Sheriff, dated August 27, 2003, A.G. No. 2003-227. Accordingly, a person of unsound mind may not possess a pistol, nor may a sheriff issue a permit for that person to do so.

Whether a person diagnosed with PTSD is of "unsound mind" is a factual question. The Attorney General makes determinations of law and not of fact.

To assist you, however, the following information is provided. Courts have recognized that "unsound mind" is a phrase of "somewhat elastic significance" and suggested that it is better "to employ more definite terms in

defining and describing the mental status than is imported by the general phrase ‘unsound mind.’” *Todd v. Ward*, 201 Ala. 205, 206 (Ala. 1918).

Nonetheless, the Code does not currently offer a more succinct definition of the term. Section 1-1-1(5) of the Code, in defining “lunatic,” “insane,” and “non compos mentis” provides that these terms include “all persons of unsound mind.” ALA. CODE § 1-1-1(5) (1999). This section, however, fails to elaborate on the meaning of “unsound mind.” See *Travis v. Ziter*, 681 So. 2d 1348 (Ala. 1996) (it is unclear what constitutes an “unsound mind”).

Former section 26-2-1 of the Code defined a “person of unsound mind,” for purposes of that chapter, as including “idiots, lunatics or the insane.” ALA. CODE § 26-2-1 (1986) (repealed effective Jan. 1, 1988, by Act 87-590). In 1987, however, that section was repealed when the Legislature enacted the “Alabama Uniform Guardianship and Protective Proceedings Act” (“UGPPA”). ALA. CODE §§ 26-2A-1 to 26-2A-160 (2009 & Supp. 2013).

“Courts must consider subsequent acts passed by the Legislature to clarify previously ambiguous provisions.” *Blockbuster v. White*, 819 So. 2d 43, 46 (Ala. 2001). The UGPPA replaced the term “person of unsound mind” with the term “incapacitated person” and defined “incapacitated person” as “[a]ny person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.” ALA. CODE § 26-2A-20(8) (2009) (emphasis added). Thus, it is the conclusion of this Office that a person who is impaired by reason of mental illness or mental deficiency to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions constitutes a person of unsound mind.

In the event that sufficient information to ascertain whether a person is of unsound mind is unavailable, a sheriff may, nonetheless, deny a person with a mental disorder, including PTSD, a pistol permit. Section 13A-11-75(a)(1) states as follows:

- a. *The sheriff of a county*, upon the application of any person residing in that county, within 30 days from receipt of a complete application and accompanying fee, **shall issue or renew a permit** for such person to carry a pistol in a vehicle or concealed on or about his or her person within this state for one to five year increments, as requested by the person

seeking the permit, from date of issue, *unless the sheriff determines that the person is prohibited from the possession of a pistol or firearm pursuant to state or federal law, or has a reasonable suspicion that the person may use a weapon unlawfully or in such other manner that would endanger the person's self or others. In making such determination, the sheriff may consider whether the applicant:*

1. Was found guilty but mentally ill in a criminal case.

2. Was found not guilty in a criminal case by reason of insanity or mental disease or defect.

3. Was declared incompetent to stand trial in a criminal case.

4. Asserted a defense in a criminal case of not guilty by reason of insanity or mental disease or defect.

5. Was found not guilty only by reason of lack of mental responsibility under the Uniform Code of Military Justice.

6. Required involuntary inpatient treatment in a psychiatric hospital or similar treatment facility.

7. Required involuntary outpatient treatment in a psychiatric hospital or similar treatment facility based on a finding that the person is an imminent danger to himself or herself or to others.

8. Required involuntary commitment to a psychiatric hospital or similar treatment facility for any reason, including drug use.

9. Is or was the subject of a prosecution or of a commitment or incompetency proceeding that could lead to a prohibition on the receipt or possession of a firearm under the laws of Alabama or the United States.

10. Falsified any portion of the permit application.

11. Caused justifiable concern for public safety.

ALA. CODE § 13A-11-75(a)(1) (Supp. 2013) (emphasis added). In so doing, the sheriff must take into account how recent any of the factors relied upon occurred in relation to the date of the application. ALA. CODE § 13A-11-75(b) (Supp. 2013). The sheriff must also provide written reasons for the denial to the applicant unless doing so would interfere with a criminal investigation. *Id.* Additionally, a pistol permit previously granted may be revoked upon the occurrence of any of the circumstances set forth in section 13A-11-75(a)(1). ALA. CODE § 13A-11-75(2) (Supp. 2013).

With respect to your final question, a diagnosis of PTSD only affects the ability of a law enforcement officer to lawfully carry a pistol if the PTSD is of such a nature as to render the officer of “unsound mind.” ALA. CODE § 13A-11-76 (2006). Such a determination is a factual question that this Office cannot answer. Additionally, federal law prohibits “***any person***” who has been adjudicated as a mental defective or who has been committed to a mental institution” from receiving any firearm “which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C.A. § 922(g)(4) (West 2014) (emphasis added).

CONCLUSION

Alabama law does not prohibit a person of unsound mind from possessing a long-gun if the barrel thereof is 12 inches or more in length.

A sheriff is prohibited from issuing a pistol permit to a person of unsound mind.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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