

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1000

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Purchase of Firearms by Mentally Ill Persons

DATE: April 18, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Brown	Cibula	JU	Favorable
3.	Cellon	Phelps	RC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1000 amends the definition of “committed to a mental institution” in s. 790.065, F.S., to include persons found by an examining physician and a court to qualify for involuntary treatment but who decide to voluntarily admit him or herself for inpatient or outpatient treatment.

The court’s order finding that the voluntary patient meets the criteria for involuntary placement (because the patient presents an imminent danger to him or herself or others) will be added to the state and national databases used in background checks for firearm purchases. The patient’s license to carry a concealed weapon in Florida will be withheld, suspended, or revoked.

Current law allows a person who is adjudicated as mentally defective to petition the court to have the firearm restrictions removed. The court must find that the person is not likely to act in a manner that is dangerous to public safety and that granting the relief is not contrary to the public interest.¹ The bill authorizes persons who are voluntarily admitted for treatment to seek removal of the firearm restrictions in the same manner.

¹ Section 790.065(2)(a)4.d., F.S.

This bill substantially amends section 790.065, Florida Statutes.

II. Present Situation:

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,² Florida law requires federal firearms licensees (FFLs)³ to request background checks on individuals attempting to purchase a firearm.

Created in 1989, the Firearms Purchase Program (FPP) operates 7 days a week, 363 days a year and is designed to provide FFLs with immediate responses to background check inquiries.⁴ Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving requests, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm will violate federal or state law and provides a response to the FFL.⁵

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms⁶ to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.⁷

Florida defines "adjudicated mentally defective" as:

A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.⁸

² Pub. L. No. 103-159 (1993).

³ 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

⁴ The Florida Senate, *Interim Project Report 2004-128, Review of FDLE Firearm Purchase Program 4* (Dec. 2003).

⁵ Jamie Y. Chandler, *Firearm Purchase Program, Can Non-approval Data be Used as a Predictor of Future Criminal Activity? A Strategic Assessment*, Florida Dept. of Law Enforcement 8 (Nov. 5, 2007).

⁶ "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

⁷ Section 790.065(2)(a)4., F.S. *see also* 18 U.S.C. § 922(d), which states that "it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."

⁸ Section 790.065(2)(a)4.a., F.S. Note that "incapacitated person" is defined as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. s. 744.102(12), F.S.

The term “committed to a mental institution” is defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.⁹

To help ensure that the above-described persons are not able to purchase a firearm, the Florida Department of Law Enforcement (FDLE) created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. According to FDLE, there are currently more than 120,000 mental health orders relating to nearly 87,000 persons in the MECOM database.

The statute requires clerks of court to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month after the adjudication or commitment.¹⁰ These records are then uploaded into the MECOM database,¹¹ and are accessed by the FPP as part of the screening of potential firearm purchasers. FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license.¹²

Concealed Weapons Permits

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants who qualify.¹³ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.¹⁴

According to the FY 2011-2012 statistics, the DACS received 151,883 new licensure applications and 66,974 requests for licensure renewal during that time period.¹⁵

⁹ Section 790.065(2)(a)4.b., F.S.

¹⁰ Section 790.065(2)(a)4.c., F.S.

¹¹ FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

¹² Section 790.065(2)(a)4.f., F.S.

¹³ Section 790.06(1), F.S.

¹⁴ *Id.*

¹⁵ Florida Dept. of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Reports, Applications and Dispositions by County* (July 1, 2011 – June 30, 2012), available at http://licgweb.doacs.state.fl.us/stats/07012011_06302012_cw_annual.pdf.

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.¹⁶

Most pertinent to this bill, the applicant must attest that he or she is in compliance with the criteria contained in subsection (2) of s. 790.06, F.S., which requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. An applicant is presumed to chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹⁷

¹⁶ Section 790.06(2), (4), and (5), F.S.

¹⁷ Section 790.06(2), F.S.

The DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the same criteria required for the DACS to initially issue a license;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁸

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁹ Failure to have proper documentation and display it upon demand is a noncriminal violation, carrying a penalty of \$25.²⁰

Florida's Mental Health Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.²¹ Codified in part I of ch. 394, F.S., the Baker Act provide the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for an involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
 - A substantial likelihood exists that without care or treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.²² In no case may a receiving facility hold a patient for involuntary

¹⁸ Section 790.06(10), F.S.

¹⁹ Section 790.06(1), F.S.

²⁰ Section 790.06(1), F.S.

²¹ Chapter 71-131, L.O.F.

²² Section 394.463(2)(f), F.S.

examination longer than 72 hours.²³ Within the 72-hour examination period, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.²⁴

III. Effect of Proposed Changes:

The bill amends the definition of “committed to a mental institution” in s. 790.065(2)(a)4.b., F.S., to include persons who have had an involuntary examination under the Baker Act and who then voluntarily admit themselves for outpatient or inpatient treatment so long as all of the requirements below are satisfied:

- An examining physician finds that the person is an imminent danger to himself or herself or others;
- The examining physician certifies that if the person does not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment will be filed under the Baker Act., or the examining physician certifies that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition;
- Before agreeing to voluntary treatment, the person receives written notice of that finding and certification, and written notice that as a result of such finding, he or she will be prohibited from purchasing a firearm, and will not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledges such notice in writing, in substantially the following form:

“I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law.”

²³ *Id.*

²⁴ Section 394.463(2)(i), F.S.

- A judge or a magistrate reviews the record classifying the person as an imminent danger to himself or herself or others and orders that such record be submitted to FDLE.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, F.S., with the clerk of the court for the county in which the involuntary examination under s. 394.463, F.S., occurred. No fee may be charged for such filing. The clerk must present the record to a judge or magistrate within 24 hours after receipt. The judge or magistrate is required to review the record *ex parte* (in private). If the judge determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, the judge must order that the record be submitted to FDLE. If so ordered, the record must be submitted to FDLE within 24 hours.

The new definition of "committed to a mental institution" and the procedure created for the examining physician, receiving or treatment facility, and the court to follow will allow the court order and records to be transmitted to FDLE to be included in the MECOM and NICS databases.

Because the records are a part of the databases, the person will not be able to purchase a firearm or receive a concealed weapons permit, and if he or she possesses a concealed weapons permit, it will be suspended or revoked. The firearm and concealed weapons restrictions will remain effective until the person is ready to avail him or herself of the process under current law for having these restrictions lifted.²⁵

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁵ Section 790.065(2)(a)4.d., F.S.

B. Private Sector Impact:

A person who voluntarily commits himself or herself to a mental health facility voluntarily under pressure of involuntary commitment will lose the ability to purchase a firearm or to lawfully carry a concealed weapon. The person will have to petition the court to get firearm ownership rights restored.²⁶

C. Government Sector Impact:

The Division of Licensing of the Department of Agriculture and Consumer Services reports that this bill may result in about 25 additional administrative actions to suspend or deny concealed weapon licenses. Therefore, the bill will not result in a fiscal impact.²⁷

The Florida Department of Law Enforcement (FDLE) maintains the Mental Competency Database, used for state firearm purchase checks and shared with the FBI national criminal history database for firearm checks. The FDLE may need to enter more information into the database, but it expects a minimal fiscal impact.²⁸

To the extent that this bill increases judicial and court workload, the Office of the State Courts Administrator expects a fiscal impact from the following:

- Judges and magistrates are required to review records of persons who had an involuntary examination under the Baker Act and who have then voluntarily admitted themselves.
- Judges must then determine whether the record supports a finding that the person poses an imminent danger to himself or herself or others.
- If the judge makes this finding, the judge must order that the record be submitted to FDLE.
- Judges may also experience an increased number of petition filings for relief from firearm disabilities.

Fiscal impact, however, is indeterminate.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁶ *Id.*

²⁷ Florida Department of Agriculture and Consumer Services, April 10, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).

²⁸ FDLE Bill Analysis, March 29, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).

²⁹ OSCA Bill Analysis, April 9, 2013 (on file with the Senate Judiciary Committee).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2013:

Contains none of the original bill language.

- Includes within the definition of “committed to a mental institution” in s. 790.065, F.S., persons who have undergone an involuntary examination pursuant to s. 394.463, F.S., and found by the examining physician to present an imminent danger to him or herself or others and who therefore meets the criteria for involuntary treatment; and
 - The physician certifies that a petition for involuntary treatment either was filed or would have been filed with the court but the person chose to enter treatment voluntarily; and
 - Prior to agreeing to voluntary treatment the person was given written notice of the physician’s finding and certification as well as written notice that he or she may not be able to purchase a firearm or lawfully carry a concealed weapon as a result of entering voluntary treatment; and
 - A judge or magistrate reviewed all of the documentation provided to the court and ordered that the record be sent to the Department of Law Enforcement (FDLE).
- The administrator of the receiving facility must submit the records to the clerk of court within 24 hours of the person agreeing to voluntary admission to treatment.
- The clerk must submit the records to the judge or magistrate within 24 hours of receiving the records.
- If the judge or magistrate enters the order that the records should be submitted to FDLE that submission must occur within 24 hours of the order.
- Clerks of court are required to submit the records to FDLE pursuant to the court’s order.

- B. **Amendments:**

None.