

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 Criminal Justice

BILL: SB 1000

INTRODUCER: Senator Gibson

SUBJECT: Regulation of Firearms

DATE: March 26, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1000 creates a process whereby a licensed psychiatrist or clinical psychologist can notify the Florida Department of Law Enforcement (which in turn notifies the Department of Agriculture and Consumer Services) when a patient meets the criteria in a “preventative assessment” (PA). This notification results in a 90 day suspension of the ability to purchase or possess a firearm or ammunition and to lawfully carry a concealed weapon. The 90-day suspension can be extended by the psychiatrist or clinical psychologist.

A PA is a determination that the patient would present a danger to him or herself or others due to mental health status and the presence of a firearm or ammunition.

This bill substantially amends section 790.065 of the Florida Statutes. The bill creates section 790.339 of the Florida Statutes.

II. Present Situation:

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,¹ Florida law requires federal firearms licensees (FFLs)² to request background checks on individuals attempting to purchase a firearm.

¹ Pub. L. No. 103-159 (1993).

² 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.

Created in 1989, the Firearms Purchase Program (FPP) operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.³ 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 such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate federal or state law, and provides a response to the FFL.⁴

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms⁵ to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.⁶

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.⁷

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.⁸

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the

³ Section 790.065, F.S.

⁴ *Id.*

⁵ "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."

⁶ Section 790.065(1) and (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."

⁷ 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.

⁸ Section 790.065(2)(a)4.b., F.S.

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 of the adjudication or commitment.⁹ These records are then uploaded into the MECOM database,¹⁰ 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.¹¹

Concealed Weapons Permits

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.¹² 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.¹³

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.¹⁴

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.¹⁵

⁹ Section 790.065(2)(a)4.c., F.S.

¹⁰ FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

¹¹ Section 790.065(2)(a)4.f., F.S.

¹² Section 790.06(1), F.S.

¹³ *Id.*

¹⁴ http://licgweb.doacs.state.fl.us/stats/07012011_06302012_cw_annual.pdf last visited March 27, 2013.

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. It shall be presumed that an applicant chronically and habitually uses 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.¹⁶

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

- Is found to be ineligible under the criteria set forth in subsection (2);
- 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.¹⁷

Licenses 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.¹⁸ Failure to have proper documentation and display it upon demand is a second degree misdemeanor.¹⁹

¹⁵ Section 790.06(1)-(5), F.S.

¹⁶ Section 790.06(2), F.S.

¹⁷ Section 790.06(10), F.S.

¹⁸ Section 790.790.06(1), F.S.

¹⁹ Section 790.06(1), F.S.

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.²⁰ Codified in Part I of Chapter 394, F.S., the Baker Act provides 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 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
 - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself 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.²¹ In no case may a patient be held in a receiving facility for involuntary examination longer than 72 hours.²² 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.²³

III. Effect of Proposed Changes:

The bill creates a “preventative assessment” that would allow FDLE and DACS to suspend a person’s purchase of a firearm and his or her concealed weapons license for a period of at least

²⁰ Chapter 71-131, L.O.F.

²¹ Section 394.463(2)(f), F.S.

²² *Id.*

²³ Section 394.463(2)(i), F.S.

90 days. The bill also calls for a 90 day suspension on the purchase or possession of ammunition but these purchases are not currently regulated and the bill makes no specific provision for commencing such a regulation. A person would be subject to prosecution for a second degree felony if he or she has in her care, custody, possession or control any firearm or ammunition, carries a concealed weapon or firearm, or purchases a firearm or ammunition.

The preventative assessment occurs when a psychiatrist or clinical psychologist determines a mental illness or mental defect exists and if the patient's mental state is combined with the presence of, possession of, or access to a firearm, then the circumstances would pose an imminent danger or threat to the patient or others.

If a licensed psychiatrist or clinical psychologist makes the determinations that constitute the preventative assessment he or she must submit a report of preventative assessment to FDLE within 24 hours. The diagnosis of the patient may not be included in the report.

The patient's mental health record must be deleted by FDLE 90 days after the preventative assessment was provided unless it is renewed by the psychiatrist or clinical psychologist before 90 days expires.

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.

B. Private Sector Impact:

Persons who are the subject of the preventative assessment procedure created by the bill would have his or her ability to purchase, possess, or to have in his or her care, custody or control a firearm or ammunition, or to carry a concealed weapon for at least 90 days. He or she may experience a fiscal impact if a criminal prosecution is initiated based on a violation of the bill's prohibitions.

C. Government Sector Impact:

The DACS Division of Licensing reports that should the bill pass and become law the Division could experience indeterminate but potentially significant additional expenditures. This is because the bill requires the division to issue 90-day suspensions upon notification by FDLE that a psychiatrist or clinical psychologist had conducted a PA of that concealed weapons (CW) licensee. An indeterminate number of suspensions would result, given that a PA as defined in the bill could result from an encounter of any of the more than one million CW licensees with a psychiatrist or clinical psychologist in a counseling or evaluation setting. The division's legal section would have to track any licensee whose license was suspended pursuant to the bill as the division would be required to automatically reinstate the license after 90 days, if the PA's conclusion was not renewed by the psychiatrist or clinical psychologist.

According to the Division, the bill's immediate suspension and 90-day reinstatement provisions would require the division's legal section to reallocate its present resources. Depending on the number of suspensions created, the bill may significantly affect the timeliness of other suspensions, revocations, and reinstatements that the division's legal section currently handles. If only one percent of the current one million plus CW licensees were to be the subject of a PA, more than 10,000 CW licensees would require immediate suspension, to be followed 90 days later by either an immediate reinstatement or a suspension extension, depending on whether the PA is renewed. As the division does not automatically suspend or reinstate CW licenses as contemplated by the bill, the division will also be required to devote additional programming resources to meet the bill's suspension and reinstatement requirements.²⁴

FDLE reports that SB 1000 will require additional MECOM database programming the fiscal impact of which has not been determined.

The Criminal Justice Estimating Conference, which meets to estimate the prison bed impact of bills that create new felony law violations, has not yet considered this bill.

VI. Technical Deficiencies:

On lines 55 and 65 reference is made to a "firearms license" which may create some confusion as there is no firearms license recognized or defined in Florida law. The phrase appears to be meant as another way of referring to a concealed weapon or firearm license. It is suggested that the phrase "firearms license" be deleted as the term "license to carry a concealed weapon or firearm" appears in context on lines 55 – 56 and 65 -66.

VII. Related Issues:

None.

²⁴ Senate Fiscal Note submitted by the Department of Agriculture and Consumer Services, Division of Licensing, February 27, 2013.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
