

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1355 Purchase of Firearms by Mentally Ill Persons

**SPONSOR(S):** Judiciary Committee; Criminal Justice Subcommittee; Watson, B. and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
2) Judiciary Committee	18 Y, 0 N, As CS	Cunningham	Havlicak

### SUMMARY ANALYSIS

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms to persons who have been “adjudicated mentally defective” or who have been “committed to a mental institution” by a court. The term “committed to a mental institution” is currently 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.

A person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of “committed to a mental institution” does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

The bill amends the definition of “committed to a mental institution” to include persons who have had an involuntary examination under the Baker Act and who have voluntarily admitted themselves for outpatient or inpatient treatment so long as the below requirements are satisfied:

- An examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing in the petition;
- Before agreeing to voluntary treatment, the person received written notice of the examining physician’s finding and certification, and written notice that as a result of such finding, the person may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged such notice in writing; and
- A judge or a magistrate reviewed the record classifying the person as an imminent danger to himself or herself or others, and ordered that the record be submitted to the Florida Department of Law Enforcement.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **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.<sup>1</sup> 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.<sup>2</sup> In no case may a patient be held in a receiving facility for involuntary examination longer than 72 hours.<sup>3</sup> Within the 72-hour 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.<sup>4</sup>

#### **Florida Firearms Law**

In accordance with the federal Brady Handgun Violence Prevention Act,<sup>5</sup> Florida law requires federal firearms licensees<sup>6</sup> (FFLs) to request background checks on individuals attempting to purchase a firearm. To comply with this requirement, FFLs in Florida contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP).

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.<sup>7</sup> Pursuant to s. 790.065, F.S., FFLs must contact

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<sup>1</sup> Chapter 71-131, L.O.F.

<sup>2</sup> Section 394.463(2)(f), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 394.463(2)(i), F.S.

<sup>5</sup> Pub. L. No. 103-159 (1993).

<sup>6</sup> 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.

<sup>7</sup> Section 790.065, F.S.

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 state or federal law, and provides a response to the FFL.<sup>8</sup>

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms<sup>9</sup> to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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 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. The statute requires clerks to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.<sup>13</sup> These records are then uploaded into the MECOM database,<sup>14</sup> and are accessed by the FPP as part of the screening of potential firearm purchasers.<sup>15</sup> According to FDLE, there are currently more than 90,000 mental health records in the MECOM database.

As noted above, a person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of "committed to a mental institution" does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

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<sup>8</sup> *Id.*

<sup>9</sup> "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."

<sup>10</sup> Section 790.065(1) and (2)(a)4., F.S.

<sup>11</sup> Section 790.065(2)(a)4.a., F.S.

<sup>12</sup> Section 790.065(2)(a)4.b., F.S.

<sup>13</sup> Section 790.065(2)(a)4.c., F.S.

<sup>14</sup> FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

<sup>15</sup> 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. Section 790.065(2)(a)4.f., F.S.

## Effect of the Bill

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 have voluntarily admitted themselves for outpatient or inpatient treatment so long as the below requirements are satisfied:

- An examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(i)4. F.S., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing in the petition;
- Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged 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."

- A judge or a magistrate has reviewed the record classifying the person as an imminent danger to himself or herself or others, and ordered 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 and, if he or she determines that the record supports the classifying of the person as an imminent danger to themselves or others, to order that the record be submitted to FDLE. If so ordered, the record must be submitted to FDLE within 24 hours.

## B. SECTION DIRECTORY:

Section 1. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 2. Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Section 943.03(4), F.S., requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment makes formatting changes to better structure the definition amended by the bill.

On March 28, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment makes technical changes that better describe the process by which mental health records are submitted to FDLE.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.