

**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 Judiciary Committee

BILL: CS/SB 1616

INTRODUCER: Judiciary Committee, Criminal Justice Committee and Senator Lynn

SUBJECT: Revocation or Suspension of Concealed Firearm Licenses

DATE: April 8, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	Rogers	Cooper	CM	<b>Favorable</b>
3.	Treadwell	Maclure	JU	<b>Fav/CS</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes  
B. AMENDMENTS.....  Technical amendments were recommended  
 Amendments were recommended  
 Significant amendments were recommended

**I. Summary:**

This bill authorizes the Florida Department of Law Enforcement to share data with the Department of Agriculture and Consumer Services (department) on a routine basis. Currently, the mental health data in the MECOM (mental competency) database is shared, upon request, at the time the department is conducting a background check on the initial application for a concealed weapon or firearm license. Once the application is approved and the license is issued, the department is statutorily required to suspend or revoke the license when a license-holder is adjudicated an incapacitated person or is committed to a mental institution. However, the department does not have routine access to the information necessary to form the basis of a suspension or revocation on mental health grounds. This bill would give the department that access.

Additionally, the bill expands the definition of “committed to a mental institution” to include individuals under court order for involuntary outpatient placement, for purposes of the issuance of concealed weapons and firearms licenses, as well as suspension or revocation of those licenses.

This bill substantially amends section 790.065, Florida Statutes.

## **II. Present Situation:**

### **Issuance of Concealed Weapon Licenses**

The Department of Agriculture and Consumer Services (department) is statutorily authorized to issue licenses to carry concealed weapons and firearms.<sup>1</sup> The applicant must provide identifying information, including fingerprints, to the department for processing prior to the issuance of a concealed-carry license. Mental capacity and past commitment to mental health institutions are among the criteria the department examines in determining whether an applicant meets the statutory requirements for possessing a concealed-carry license.<sup>2</sup>

The department makes criminal history and mental health information inquiries of the Federal Bureau of Investigation (FBI) and the Department of Law Enforcement (FDLE), and sometimes local authorities, during the investigation of an applicant's initial request for a concealed-carry license.

### **Suspension or Revocation of Concealed Weapon Licenses**

Under circumstances involving an applicant's or license-holder's arrest, issuance of a domestic violence injunction, or sentencing for certain crimes, the department is authorized to suspend or revoke a current license or deny a pending application.<sup>3</sup> In order to carry out that function, the department is provided with arrest, injunction, and sentencing information weekly, and in some situations, daily. This information is routinely provided by FDLE and sometimes supplemented by local law enforcement or court authorities.

Section 790.06(10), F.S., requires the department to suspend or revoke a concealed-carry license when a license-holder is adjudicated an incapacitated person or is committed to a mental institution.<sup>4</sup> However, there is no routine flow of information to the department when adjudications of incapacity or commitments to mental institutions occur. In fact, in those cases where a license-holder is found to be incapacitated or committed, the department may or may not know about it at all. Sometimes a family member of the license-holder will notify the department or perhaps local law enforcement will provide notification of the event, but the information is piecemeal, and there are occasional obstacles to verification of the information because of privacy concerns.

### **FDLE Mental Competency Database (MECOM)**

Legislation passed in 2006 required FDLE to create and maintain a database of persons adjudicated mentally defective<sup>5</sup> or committed to a mental institution.<sup>6</sup> As a result, the MECOM

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<sup>1</sup> Section 790.06(1), F.S.

<sup>2</sup> Section 790.06(2)(i) and (j), F.S., require the department to issue a license if the applicant has not been adjudicated an incapacitated person—unless five years have passed since the applicant's restoration to capacity; or if the applicant has not been committed to a mental institution—unless he or she produces a certificate from a certified psychiatrist stating that five years have lapsed since he or she suffered from disability.

<sup>3</sup> Section 790.06(3), F.S.

<sup>4</sup> Section 790.06(10)(g) and (h), F.S.

<sup>5</sup> “‘Adjudicated mentally defective’ means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or other disease, is a danger to himself or herself or to others or lacks

(mental competency) database was established in February 2007, and is accessed as part of the screening process for potential firearm purchasers in Florida and by the FBI National Instant Check System (NCIS).<sup>7</sup> It is also accessed by the department in the evaluation of individuals applying for concealed weapon licenses.<sup>8</sup> The FDLE has worked in collaboration with the Florida Association of Court Clerks to implement this system. According to FDLE, there are more than 4,000 mental competency and commitment records in the MECOM database.<sup>9</sup> Between February 1, 2007, when the MECOM database became functional, and August 2007, 18 firearm purchases have been denied based on the federal and state mental health criteria submitted to the national NICS database by FDLE.<sup>10</sup>

### **Limited Access to MECOM**

Although FDLE now has access to the mental health information contained in the MECOM database which could validate suspension or revocation of an active concealed-carry license, there are apparent statutory limitations that prevent sharing of that information with the department. The FDLE is only authorized to provide the mental competency data to the department for “determination of *eligibility for issuance*” of a concealed-carry license, *not for retention of the license*.<sup>11</sup>

This lack of information, after a license has been issued, is problematic for the department because the information upon which a statutory requirement to suspend or revoke a license is based is not readily available to the state agency that is required to carry it out.

### **III. Effect of Proposed Changes:**

The bill amends s. 790.065(2)(a)4.d., F.S., to authorize the Florida Department of Law Enforcement to routinely disclose mental competency data to the Department of Agriculture and Consumer Services (department), so that the department is capable of determining concealed-carry licensees’ eligibility for license retention, based upon the mental health criteria set forth in s. 790.06(10), F.S.

In addition, the bill expands the definition of “committed to a mental institution” to include those persons under court order for involuntary outpatient placement as defined in s. 394.4655, F.S. This change will ensure that these individuals will be ineligible for the issuance of concealed weapons or concealed firearms licenses unless the person satisfies the prescribed statutory timeframes. Furthermore, an individual will be subject to suspension or revocation of the license in the event he or she becomes subject to a court order for involuntary outpatient placement.

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the mental capacity to contract or manage his or her own affairs.” Section 790.065(2)(a)4.a., F.S.

<sup>6</sup> Chapter 2006-176, L.O.F. “‘Committed to a mental institution’ means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse.” Section 790.065(2)(a)4.b., F.S.

<sup>7</sup> Florida Senate, Committee on Criminal Justice, *Firearm Purchase and Possession by the Mentally Ill*, Interim Project Report 2008-113, at 5 (November 2007).

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

<sup>9</sup> Florida Department of Law Enforcement, Annual Performance Report (2006-2007), available at [http://www.fdle.state.fl.us/annualreport/06-07/annualrpthighlight\\_info.pdf](http://www.fdle.state.fl.us/annualreport/06-07/annualrpthighlight_info.pdf) (last visited on April 2, 2008).

<sup>10</sup> Florida Senate, *supra* note 7, at 5. Some of the purchases were attempted in Florida, while others were attempted in other states that now have access to the mental health-related criteria provided to NICS.

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

The bill provides an effective date of July 1, 2008.

**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:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement and the Department of Agriculture and Consumer Services report that the agencies will not experience a fiscal impact from the bill and that they will be able to absorb the programming into their current workloads.

The expansion of the definition of “committed to a mental institution” to include individuals under court order for involuntary outpatient placement will require the Florida Department of Law Enforcement to compile additional data related to these placements for inclusion in the MECOM database.

**VI. Technical Deficiencies:**

By broadening the definition of “committed to a mental institution,” the bill affects the issuance of concealed weapons and firearms licenses, as well as revocation and suspension of those licenses. The subject of the bill only references “revocation or suspension” of licenses for those persons who are adjudicated incapacitated or committed to a mental institution. The Legislature may wish to incorporate into the title that issuance of these licenses to persons who are adjudicated incapacitated or committed to a mental institution is also addressed by the bill.

The bill and existing law reference involuntary outpatient placement and involuntary inpatient placement “as defined in” specific statutes. (See lines 50-51.) However, the respective statutes

provide criteria and procedures for both involuntary placements without providing explicit definitions. The Legislature may wish to substitute “under” for “as defined in” regarding these statutory references.

**VII. Related Issues:**

None.

**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 Judiciary on April 8, 2008:**

The committee substitute includes involuntary *outpatient* placement as defined in s. 394.4655, F.S., in the definition of “committed to a mental institution,” for purposes of determining whether the person is eligible for issuance of a license, or whether a basis exists for revoking or suspending a previously issued concealed weapons or firearms license.

- B. **Amendments:**

None.