



The Florida Senate

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Committee on Criminal Justice

FIREARM PURCHASE AND POSSESSION BY THE MENTALLY ILL

SUMMARY

There are two points at which government and citizens routinely have contact concerning the lawful possession and carrying of firearms. One is at the point of purchase of a firearm by a citizen from a licensed dealer. The other is the process by which a citizen may become licensed to carry a concealed firearm.

It is a tenuous balance that is struck between a citizen's right to bear arms and government's responsibility to the citizenry for keeping them safe. In these two areas – firearm purchase and concealed-carry licensure – the Florida Legislature has exercised care in maintaining a balance. As societal circumstances change and threats to public safety arise, the laws governing firearms are likewise changed.

During the 2006 Legislative Session, because of a gap in information being supplied by Florida to the national firearm purchase background-check system, the law was changed to enhance public safety. Effective February 1, 2007, the Florida Department of Law Enforcement was authorized to "review any records available" in order to determine if a potential firearm purchaser "has been adjudicated mentally defective or has been committed to a mental institution by a court and as a result is prohibited by federal law from purchasing a firearm."¹

The Florida Department of Law Enforcement (FDLE) serves as a point of contact state agency for the Federal Bureau of Investigation's National Instant Criminal Background Check (NICS) system. The federal Brady Act requires this background check before a federally-licensed firearms dealer is permitted to sell a firearm to a potential purchaser.

Firearm dealers contact FDLE seeking approval to sell a firearm, and personnel at FDLE perform a

background check to confirm that the purchaser meets federal and Florida firearm purchase criteria prior to authorizing the sale.

Since the enactment of Section 1, Chapter 2006-176, Laws of Florida, FDLE has been capable of giving accurate mental health background information on potential firearm purchasers.

FDLE and the Clerks of the Courts have worked closely to implement the new law and feed the data into the newly-created Mental Competency Database (MECOM) that makes this vital information accessible in an expedient fashion. Various agencies and interested parties have met, and will continue to do so, in an effort to streamline the process of data gathering, entry, and retrieval. Care is being taken to protect the confidential or exempt-from-public-records status of any data transferred to FDLE.

Since August, 2007, there have been 18 firearm sales denied based upon the mental health criteria entered into the MECOM database.

The Department of Agriculture and Consumer Services (DACS) administers the program through which a citizen may apply for a license to carry a concealed weapon or firearm. Before a potential licensee is approved, a criminal background check is completed, utilizing information provided from FDLE and national databases. DACS also receives daily and weekly updates on arrests, domestic violence injunctions issued, and other critical information that affects a person's ability to become licensed under state law.

Although DACS is required by statute to suspend or revoke concealed-carry licenses if a licensee is adjudicated incapacitated or committed to a mental institution subsequent to the license being approved, the DACS personnel are not currently able to access records of those adjudications and commitments.

¹ Section 1, Ch. 2006-176, L.O.F., amending s. 790.065(2)(a), F.S.

The information that DACS needs in order to perform its statutory responsibility exists in the MECOM database, but FDLE is not statutorily authorized to share that information with DACS subsequent to the DACS background investigation on a citizen's initial concealed-carry license application.

In other words, after the concealed-carry license is issued, DACS is not privy to information that would allow the department to revoke or suspend the license based on statutory mental health criteria, as the department is supposed to do. The concealed-carry licensure (and license retention) process is another point of contact between citizens and government and the lawful possession of firearms. Therefore, DACS review of mental health criteria for concealed-carry license retention is a point at which public safety can be enhanced.

Whether FDLE should be authorized to share the MECOM data with DACS is a policy question that merits consideration. Should the Legislature decide this issue needs to be addressed, staff recommends that s. 790.065(2)(a)4.d., F.S., be amended to authorize the Florida Department of Law Enforcement to disclose any applicable data to the Department of Agriculture and Consumer Services 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.

The definitions of "adjudicated mentally defective" and "committed to a mental institution" in Section 1, Ch. 2006-176, Laws of Florida, have been examined by all stakeholders, especially in view of the tragedy at Virginia Tech. Concerns have been addressed in this report regarding who would and would not qualify for firearm purchase in Florida.

The definitions in Florida (and federal) law do not appear to exclude persons who are ordered by a court to seek outpatient mental health treatment (which has been a specific concern raised) from meeting the criteria for being prohibited from purchasing a firearm. However, staff has determined that it is *critical that court orders be specific in their findings* so that there is no lay-person interpretation necessary to determine if a person meets the statutory firearm purchase-prohibitor criteria.

BACKGROUND

Generally speaking, the purchase and possession of firearms in Florida is regulated – but the fact is, this is

not true in *all* instances of sales or in *all* circumstances of possession. The biggest limitation to regulation exists because not all firearms are obtained legally, or not purchased from government-licensed firearm dealers and therefore not susceptible to regulation.

One study illustrates that the overwhelming majority of firearms that "fall into the wrong hands" do so because they are stolen, bought on the street, or belong to a friend or family member.²

Private transactions between individuals, legitimate or otherwise, are not subject to government regulation. However, the federal government regulates licensed firearm dealers. Therefore a firearm purchase from a licensed dealer is the point at which government has the opportunity to intervene for public safety purposes.

Most citizens are not prohibited from owning or carrying firearms, although the places into which and manners by which they may be carried are the subject of regulation. For example, firearms may be carried in a concealed manner with a valid permit issued by the Department of Agriculture and Consumer Services, but citizens may not generally carry a firearm openly.³ The "carry permit" does not, however, authorize one to carry a concealed firearm onto elementary or secondary school grounds.⁴

A small segment of the population – convicted felons – is strictly prohibited from purchasing or possessing firearms unless that particular right has been restored. Others are prohibited from purchasing firearms from licensed dealers for other reasons such as certain arrests

² The U.S. Department of Justice reports that a 1997 survey of prison inmates indicated that, among those who possessed a gun, the source of the gun was:

- a flea market or gun show – less than 2%
- a retail store or pawnshop – about 12%
- family, friends, street buy, illegal source – 80%

Firearms and Crime Statistics, Bureau of Justice Statistics Publications.

³ compare ss. 790.01(2) and (3), 790.053(1) and 790.06, F.S.

Section 790.01(2) states: "A person who carries a concealed firearm on or about his or her person commits a felony of the third degree...", however, s. 790.01(3), F.S., carves out an exception for "a person licensed to carry a ... concealed firearm pursuant to the provisions of s. 790.06". Note that s. 790.053(1), F.S. states: "Except as otherwise provided by law ... it is unlawful for any person to openly carry on or about his or her person any firearm...."

⁴ see s. 790.06(12), F.S.

and pending criminal offenses, active domestic violence injunctions, or age restrictions. Among those prohibited from purchasing firearms in Florida are people who have been adjudicated mentally defective or committed to a mental institution.⁵

The recent tragedy at Virginia Tech brought national attention to the public safety issues that may arise when people who are experiencing serious mental illness purchase and possess firearms.

This report will explain the process of lawful purchases of firearms from licensed dealers and the measures the State of Florida has in place to prevent persons suffering from mental illness from purchasing firearms from those dealers.

METHODOLOGY

Staff engaged in legal research and attended meetings with interested parties including the Florida Department of Law Enforcement, Clerks of the Courts, judges, the Department of Children and Families and the Department of Agriculture and Consumer Services.

FINDINGS

Firearm Purchase from Licensed Dealer – Citizen and Government Point of Contact

The Brady Act (the federal Gun Control Act, 18 U.S.C. 922) required that a National Instant Criminal Background Check System (NICS) be established in November 1998, for the purpose of checking available records on persons who may be disqualified from purchasing firearms.

Under the Brady provisions anyone purchasing a firearm from a federally licensed dealer or redeeming a pawned firearm must first undergo a background check either directly through the FBI or through the state in which the purchase is being made. Like most states, Florida has one designated agency as the statewide Point of Contact (POC) for firearm dealers. In Florida the POC is the Florida Department of Law Enforcement, which operates the Firearm Purchase Program.

The computerized NICS system relies upon data submitted by the states to the FBI for inclusion in the nationwide system. The NICS system should, therefore “hit” a Florida criminal conviction, or any other purchase-prohibiting factor on a person attempting to

purchase a firearm in another state as well as in Florida.

The Brady Act prohibits the transfer of a firearm to a person who:

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than one year,
- is a fugitive from justice,
- is an unlawful user of, or is addicted to, any controlled substance,
- has been adjudicated as a mental defective or committed to a mental institution,
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa,
- was discharged from the U.S. Armed Forces under dishonorable conditions,
- has renounced U.S. citizenship,
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child, or
- has been convicted in any court of a misdemeanor crime of domestic violence.⁶

The Brady Act restrictions listed above are the *minimum restrictions* adopted in most states, and many states have enacted additional prohibiting factors.

In Florida, several of the federal prohibitors have been expanded or clarified. Licensed dealers in Florida are also prohibited from transferring firearms to a person who:

- has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S., has been convicted of a misdemeanor crime of domestic violence,
- has had an adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred,
- has been indicted or has had an information filed against her or him for an offense that is a felony under state or federal law (pending disposition information that indicates the potential buyer is not prohibited),
- has had an injunction for protection against domestic violence entered against him or her under s. 741.30, F.S.,

⁵ s. 790.065, F.S.

⁶ The Gun Control Act (GCA), 18 U.S.C. 922(d)

- has had an injunction for protection against repeat violence entered against him or her under s. 784.046, F.S., or
- has been arrested for a dangerous crime as specified under s. 907.041(4)(a), F.S., or the crimes listed in s. 790.065(2)(c), F.S., (pending disposition information that indicates the potential buyer is not prohibited).

Florida has expanded the federal prohibitors to the extent that withholds of adjudication or suspended sentences on domestic violence crimes are included as purchase-prohibitors, as are arrests for certain dangerous crimes until such time as the disposition information excludes the prohibition.⁷

The most recent addition to the list of firearm transfer prohibitors in Florida includes circumstances where a person:

- has been adjudicated mentally defective or has been committed to a mental institution by a court and as a result is prohibited by federal law from purchasing a firearm.⁸

The FDLE Firearm Purchase Program – How does it work?

When a federally-licensed firearm dealer is selling a firearm from his or her inventory at his or her licensed premises, the dealer is prohibited from making the transfer until certain statutory requirements are fulfilled.

The dealer is expected to obtain a completed form from the potential purchaser which provides identifying information and to verify the purchaser's identity by examining a valid photo ID. The forms used in Florida are supplied by the Federal Bureau of Alcohol, Tobacco and Firearms, and are in use all over the country. Upon completion of the transaction form, the dealer then initiates a phone call, by toll-free number, to the Firearm Purchase Program and requests the background check. Personnel at FDLE answer the incoming calls, check the state and federal records, and generally provide the dealer with a unique approval number, after which the firearm transfer may be completed.⁹

Committee staff visited the Firearm Purchase Program during the interim and observed the background-check requests from the dealers coming through and the

responses to those requests by FDLE staff. In literally a matter of a few minutes, while on the telephone, the dealer has an answer from FDLE about whether the transaction is approved or denied. Generally, the response time is less than 3 minutes.

If a potential purchase is not approved for any of the federal or state statutory reasons, a nonapproval number is issued and the transaction is not completed by the dealer.

If a solid determination cannot be made within 24 hours, a conditional approval number is issued and the transaction may be completed by the dealer. However, if information later determines that the dealer should have been prohibited from making the sale, the conditional approval number is revoked and local law enforcement is informed of the revocation.¹⁰ The Federal Bureau of Alcohol, Tobacco, Firearms and Explosives is also informed of the revocation. At this point, law enforcement may actually attempt to retrieve the firearm from the prohibited purchaser.

The Firearm Purchase Program is due to be terminated under the "sunset" provision in Florida law by October 1, 2009, unless otherwise reenacted by the Legislature.

The Effect of the 2006 Revision of Florida Law

During the 2006 Legislative Session, s. 790.065, F.S., which addresses the sale and delivery of firearms in Florida, was revised. The revision states, in pertinent part:

“(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee’s call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee: ...

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court and as a result is prohibited by federal law from purchasing a firearm.

a. As used in this subparagraph, “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 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 shall include a judicial finding of incapacity

⁷ s. 790.065, F.S.

⁸ s. 790.065, F.S.

⁹ s. 790.065(1), F.S.

¹⁰ s. 790.065(2), (3) and (4), F.S.

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.

b. As used in this subparagraph, “committed to a mental institution” means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase shall include involuntary inpatient placement as defined in s. 394.467, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but shall 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.

c. In order to check for these conditions, the department shall compile and maintain 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. ...

d. The department is authorized to disclose the collected data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose any applicable collected data to the Department of Agriculture and Consumer Services for determination of eligibility for issuance of a concealed weapons or concealed firearms license upon receipt of an applicant fingerprint submission forwarded pursuant to s. 790.06(6)(a). ...”

s. 790.065(2)(a)4., F.S.

Pursuant to the new law, FDLE, with the cooperation and assistance of the Clerks of Court Association, created the MECOM database. Since its inception, problems have been encountered, but all parties are working to overcome those problems, which include:

- gathering adequate identifying data (date of birth, race) on persons who have been adjudicated mentally defective or have been committed to a mental institution and
- uniformity of civil cover sheets, petitions and court orders such that deputy clerks can readily determine which orders should be entered into the MECOM system.

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. Some of the purchases were attempted in Florida while others were attempted in other states which now have access to the mental health-related criteria sent to NICS.

License to Carry Concealed Firearm – Another Citizen and Government Point of Contact

The Florida Department of Agriculture and Consumer Services (DACS) is statutorily authorized to issue licenses to carry concealed weapons and firearms.¹¹

The applicant must provide identifying information, including fingerprints, to the DACS for processing prior to the issuance of a concealed-carry license.

Mental capacity and past commitment to mental health institutions are among the criteria DACS examines in determining whether an applicant meets the statutory requirements for possessing a concealed-carry license.¹²

DACS makes criminal history and mental health information inquiries of the FBI and FDLE, and sometimes local authorities, during the investigation of an applicant’s initial request for a concealed-carry license.

Under circumstances involving an applicant’s or license-holder’s arrest, issuance of a domestic violence injunction, or sentencing for certain crimes, the DACS is authorized to suspend or revoke a current license or deny a pending application.¹³ In order to carry out that function, DACS 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* DACS to suspend or revoke a concealed-carry license when a license-holder is adjudicated an incapacitated person or is committed

¹¹ s. 790.06(1), F.S.

¹² Section 790.06(2) (i) and (j), F.S., require DACS 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.

¹³ s. 790.06(3), F.S.

to a mental institution.¹⁴ However, there is no routine flow of information to DACS 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, DACS may or may not know about it at all.

Sometimes a family member of the license-holder will notify DACS or perhaps local law enforcement will provide notification of the event, but the information is piece-meal, and there are occasional obstacles to verification of the information because of privacy concerns.

Although FDLE now has access to the mental health information that could validate suspension or revocation of an active concealed-carry license, there are apparent statutory limitations that prevent sharing of that information with DACS.¹⁵ This is problematic for the obvious reason that the information upon which a statutory requirement is based is not readily available to the state agency that is supposed to carry it out.

For these reasons, this point of contact between the government and citizens holding concealed-carry licensure who, subsequent to the issuance of the license have developed mental capacity or serious mental health issues, appears to be under utilized as a public safety checkpoint.

Although suspending or revoking an active concealed-carry license would not necessarily result in taking a firearm out the hands of a citizen, at the very least it would no longer give state-sanctioned permission to carry the firearm in a concealed manner.

The Virginia Tech Tragedy- How did it happen? Is there a "loophole" in Florida law or federal law?

As we analyze these issues, it is important to know the way the background-check system works and how the federal and the state purchase-prohibitors fit into the system.

The firearm dealers throughout the entire country are prohibited from selling a firearm, no matter what state their business is sited in, to a person who cannot pass the federal purchase-prohibitors. The NICS database is the national repository that is checked by all agencies responsible for running the background checks for the dealers. NICS contains data sent to it by the state

agencies responsible for forwarding that information. In other words, the federal database is only as good as the data it contains.

The U.S. Department of Justice surveyed the states between October 2002 and February 2003, on the quality and availability of state mental health records, among other kinds of records, that would prohibit a potential firearm sale. The survey found that:

- Fourteen states did not have the ability to access mental health records for background-check purposes.
- Of the states that did have access, 24 states and the District of Columbia utilized court records for such checks.
- In most states, court records were the primary source for data on persons found not guilty by reason of insanity or incompetent to stand trial.
- Common reasons given for not accessing mental health records were a lack of interface between agencies, incomplete or unautomated records, the inability to positively identify the person from the records, or state privacy laws.¹⁶

The reasons for Florida not accessing and providing mental health records to NICS were addressed by the 2006 revision of Florida's law discussed above. The new law served as the statutory authority for the gathering of necessary mental health information and making it accessible for NICS and FDLE to provide accurate firearm purchase background checks.

The tragedy in April, 2007, where 32 students and professors were killed by a lone gunman on the Virginia Tech campus, appears to have highlighted a situation in which mental health records were not made accessible to NICS by Virginia authorities. In that case, the gunman purchased two firearms, later used in the massacre, in the State of Virginia. At the time of the purchases in February and March of 2007, he passed the requisite federal and state background check. It is now known that the gunman had been before a court in December of 2005, and the court found that he "present(ed) an imminent danger to himself as a result of mental illness." The court order went on to state: "The alternatives to involuntary hospitalization and treatment were investigated and were deemed suitable." The court then directed Seung-Hui Cho to receive and abide by recommended treatment in an "outpatient"

¹⁴ s. 790.06(10) (g) and (h), F.S.

¹⁵ s. 790.065(2)(a)4.d., F.S., as revised by Ch. 2006-176, L.O.F.

¹⁶ Survey of State Records Included in Presale Background Checks, 2003, Bureau of Justice Statistics, U.S. Department of Justice.

setting.¹⁷ Why wasn't this court record entered in the NICS or State of Virginia firearm purchase databases?

Virginia law requires the court clerk to forward court orders for *involuntary admission to a facility* to the Virginia Central Criminal Records Exchange, to be “used (only) to determine a person’s eligibility to possess, purchase, or transfer a firearm.”¹⁸ Virginia law also allows a court to order a less restrictive means of treatment delivery than involuntary admission to a facility when a person is found to be an imminent danger to himself.¹⁹ Such was the case with the Virginia Tech gunman. Cho was found to *present an imminent danger to himself as a result of mental illness* and he was court-ordered to receive *outpatient treatment*.²⁰

Although it appears that Cho did not meet Virginia State criteria for reporting to the state database because he was not ordered to be involuntarily admitted to a facility, it seems clear that he *did meet federal criteria* by virtue of having been deemed to be an imminent danger to himself.

The applicable federal definition of the term “mental defective,” used in the federal Brady Act as a firearm purchase-prohibitor, is found in the Code of Federal Regulations, which states in part:

“Adjudicated as a mental defective.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) *Is a danger to himself* or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.”²¹

¹⁷ Certification and Order for Involuntary Admission to a Public or Licensed Private Facility, Case #121GM3400502020, December 14, 2005, Hon. Paul M. Barnett.

¹⁸ 37.2-819, Code of Virginia

¹⁹ 37.2-817, Code of Virginia states, in pertinent part: “if the judge ... finds that the person presents an imminent danger to himself...as a result of mental illness...less restrictive alternatives to involuntary inpatient treatment...are deemed suitable,...and the ordered treatment can be delivered on an outpatient basis,...the judge shall order outpatient treatment.”

²⁰ Hon. Paul M. Barnett Order (see footnote 17)

²¹ The other applicable Brady language is “committed to a mental institution,” defined in the Code of Federal Regulations, 27 C.F.R. 478.11.

A careful reading of the court’s order in conjunction with the federal firearm purchase guidelines, sadly, seems to indicate that Cho may have slipped through the cracks. Why his mental health record was not entered into the Virginia system, and thus passed on to the NICS system is a matter of speculation. Perhaps the Virginia clerks of court did not believe Virginia law gave them that authority since *Cho was not involuntarily admitted* to a facility (Virginia law), despite the finding that he was a *danger to himself* (federal law). Perhaps there was a misunderstanding about the prevailing federal law’s applicability, and that the State law is merely “in addition to.” Maybe it was simply a matter of a misinterpretation of a court order.

At any rate, it appears that every effort has been made to make sure that this problem should not occur in Florida. Florida’s new law authorizing the MECOM database and requiring court clerks to enter certain qualifying mental health information contains the actual terms and definitions used in the federal firearm purchase-prohibitors (“adjudicated mentally defective” or “committed to a mental institution”). There are additional references made to certain mental health-related Florida statutes in the new Florida law, specifically included in the definitions of “adjudicated mentally defective” or “committed to a mental institution.”²² It is important to note that these Florida-specific statutory definitions and proceedings do not appear to limit, dilute or confuse the applicability of the federal law in any way, but rather clarify the co-application of Florida mental health law. In fact, the federal law *must* be applied by the states entering data into the FBI-NICS system, and any state-adopted deviations that appear to circumvent federal law are not acceptable to the FBI, because the deviation would constitute an attempt to pre-empt the federal regulation of firearm dealers.

In Florida, debate has emerged with regard to the apparent exclusion of court-ordered “outpatient treatment” from the list of Florida-specific firearm purchase-prohibitors. It is staff’s opinion that “outpatient treatment” is *not necessarily excluded* simply because it is not listed as *included*. It appears that so long as a court finds a person to be “adjudicated

²² These are: judicial findings of incapacity under s. 744.331(6)(a), F.S., court-ordered involuntary inpatient placement as defined in s. 394.467, F.S., court-ordered involuntary assessment and stabilization under s. 397.6818, F.S., and court-ordered involuntary substance abuse treatment pursuant to s. 397.6957, F.S.

mentally defective” (the federal *and* Florida standard), the prohibitor attaches and the information should be entered into MECOM, and the NICS database, regardless of the type of treatment ordered.²³

No System is Perfect

It appears that the Virginia Tech gunman slipped through the cracks. Studies and experience indicate that people who commit crimes are, by and large, not buying firearms through licensed dealers. People who are not federally-licensed firearm dealers and who sell or give away personal firearms, are not obligated to perform a background check on the purchaser. When we couple these facts with the reality that the firearm purchase background checks, and that the origin of and process of information being entered into the system itself, are human-driven components of the system, we must recognize that the system is not infallible. There are cracks to be slipped through. However, it appears that the Florida Legislature and implementing agencies remain diligent and committed to maintaining high standards in this critical public safety responsibility.

RECOMMENDATIONS

Staff recommends consideration of one matter of policy related to the purchase and possession of firearms by the mentally ill. Although the licensure of a person to *carry a concealed firearm* is not technically the same as the ability to *purchase a firearm*, concealed-carry regulation *is* a critical “check-point” where mental health issues and firearms coincide.

There are statutory requirements that the Department of

Agriculture and Consumer Services (DACS), in its capacity as the concealed-carry licensing agency, is simply unable to perform.

DACS is required to *suspend or revoke a concealed-carry license if the licensee* is found by a court to be incapacitated or *is committed to a mental institution*. DACS is unable to perform this function due to a lack of data-sharing.

The Florida Department of Law Enforcement (FDLE) MECOM database contains the information, supplied by the Clerks of Court. FDLE, however, is only authorized to provide the MECOM data to DACS for “determination of *eligibility for issuance*” of a concealed-carry license, *not for retention of the license*.²⁴

Staff suggests that, although suspension or revocation of a concealed-carry license is not the same as keeping a firearm out of the hands of a person who does not qualify for purchasing one, it *would* at least *remove the State’s approval* of the concealed-carrying of the firearm.

Consequently, staff recommends that the Legislature amend s. 790.065(2)(a)4.d., F.S., to authorize the Florida Department of Law Enforcement to disclose any applicable data to the Department of Agriculture and Consumer Services 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.

²³ The court ordering involuntary outpatient treatment, under s. 394.4655, F.S., must find that the person has a “mental illness,” and in view of their history and current behavior, the person is in need of involuntary outpatient treatment in order to prevent a relapse or deterioration that “would be likely to result in serious bodily harm to himself or others.” In staff’s view, if the court makes the requisite specific findings, the person would fit the purchase-prohibition criteria of “mentally defective” (specifically, “a person...as a result of mental illness...is a danger to himself or herself or others.” s. 790.065(2)(a)4.a.; 27 C.F.R. 478.11).

²⁴ s. 790.065(2)(a)4.d., F.S.