Firearm Prohibition for Certain Individuals with Mental Illnesses

The Florida Legislature passed House Bill 1355 that became state law on July 1, 2013. Specifically, HB 1355 provided conditions under which a competent adult who has been allowed to transfer to voluntary status in lieu of court-ordered involuntary placement, after being admitted for involuntary examination at a Baker Act receiving facility, and who is certified by a physician to be of imminent danger to self or others, may be prohibited from purchasing firearms or obtaining or retaining a license for a concealed weapon.

There are key components of this bill that may directly impact a variety of individuals and organizations. Stakeholders include:

- Mental health receiving facilities
- Doctors who work in or contract with the facilities
- Magistrates and judges who review the documents
- Clerks of the Circuit Court who must process the documents and forward information to the Florida Department of Law Enforcement (FDLE)
- FDLE that must provide the information to the Federal Bureau of Investigation (FBI) to be available for the National Instant Criminal Background Check System (NICS)

Before addressing the new provisions of Florida's weapons' statute, it is important to address the application of the law prior to 2013. The law's application may not have been apparent to staff of mental health and substance abuse facilities throughout the state. However, it is well-known to the Clerks of Court, judges and magistrates, and the Florida Department of Law Enforcement. In the past, when courts have found in certain circumstances that an individual has met conditions of impairment due to mental illness or substance abuse (and other reasons), the court was required to report information to the Florida Department of Law Enforcement for incorporation into data bases at the state and federal levels to prevent such individuals from purchasing firearms. These sections of the law include:

License to carry concealed weapon or firearm

s. 790.06, F.S.

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(f) 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 chapter 397 or under the provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

(j) Has not been committed to a mental institution under chapter 394, 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;

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under s. 856.011(3), or similar laws of any other state;

(g) Is adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or

(h) Is committed to a mental institution under chapter 394, or similar laws of any other state.

Sale and delivery of firearms

s. 790.065, F.S.

(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 or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or 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 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.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) 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; or

c. In order to check for these conditions, the department (FDLE) 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.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

The 2013 Florida Legislature expanded the above provisions of the state's weapon's law to expand its applicability to individuals at designated Baker Act receiving facilities who meet certain criteria for imminent danger due to their mental illnesses, but do not have an order of the court for placement under the Baker Act or for substance abuse assessment, stabilization, or treatment. The following selected provisions of Chapter 790, FS govern who can be denied a license to carry a concealed weapon or purchase a firearm, including the responsibilities of various individuals in carrying out these provisions:

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) 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., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) 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 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."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

(II) For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment

facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to FDLE, the record must be submitted to FDLE within 24 hours.

Applicability of the law

The law does ***not*** apply to persons in the following circumstances:

- Persons entering a facility on voluntary status and remaining on voluntary status regardless of their potential imminent dangerousness. The Baker Act law and multiple appellate cases place no duty on mental health professionals to initiate involuntary status even if the criteria for involuntary status is documented.
- Persons entering a facility on involuntary status on the basis of self-neglect instead of active danger, regardless of the severity of their mental illnesses.
- Persons on involuntary examination status who are discharged because they fail to meet any one of the involuntary placement criteria, without being converted to voluntary status.
- Persons whose potential for "dangerousness" is not considered by a physician as "imminent"
- Persons whose hearing on involuntary placement takes place and the petition is dismissed by the court because a less restrictive setting is found, regardless of the criteria related to active danger.
- Persons on involuntary examination status who are first taken to hospitals not designated by DCF as receiving facilities for examination or treatment of medical conditions and are released directly by a physician or psychologist or are transferred by such hospitals to voluntary status before transfer to a designated receiving facility.
- Persons subject to the involuntary provisions of the Marchman Act (397, FS) unless ordered by the court to undergo involuntary assessment and stabilization or involuntary treatment.

The law does not apply to guns currently owned by and in the possession of persons who have been reported as imminently dangerous due to mental illness – only future purchases (sale and delivery) or obtaining / retaining a concealed weapons permit.

Responsibility of Various Entities to Implement

s. 790.06, FS

The above statutory language requires the following entities to carry out their responsibilities under the law:

Physicians Practicing at Baker Act Receiving or Treatment Facilities

A person for whom an involuntary examination has been initiated must have a physician or clinical psychologist, without unnecessary delay, conduct and document the Mandatory Initial Involuntary Examination, including:

- Review of person's recent behavior;
- Review "Transportation to Receiving Facility" form (#3100)
- Review one of the following:
  - » "Ex Parte Order for Involuntary Examination" or
  - » "Report of Law Enforcement Officer Initiating involuntary Examination" (#3052a) or
  - » "Certificate of Professional Initiating Involuntary Examination" (#3052b)
- Conduct a brief psychiatric history; and
- Conduct a face-to-face examination determine if person meets criteria for release.

The following applies to an individual who has had an involuntary examination initiated, has been found to be of imminent danger and requests a transfer to voluntary status in lieu of a petition for Involuntary Placement (BA 32) being filed with the court ***or*** if there is a request for a withdrawal of a petition already filed for Involuntary Placement.

Since chapter 790, FS does not define "imminent danger," a physician can use clinical criteria he/she believes is appropriate. However, the following definition found in the criteria for Involuntary Placement [394,467(1)(a) 2, b, FS] as follows may be used:

> "There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm."

The law requires a notification to and acknowledgement by the individual that information will be provided by the facility to the Court that will lead to a prohibition against firearm purchases or having a concealed weapon permit. A Certification of Competence conducted by a physician should be completed to ensure the individual is competent to make well-reasoned, willful and knowing treatment decisions.

The form titled "Finding and Certification by an Examining Physician of Person's Imminent Dangerousness" (see form page S-17) can be used to document the individual's imminent dangerousness and competence to fully understand the meaning and consequences of converting to voluntary status.

The Physician's Finding and Certification must be provided to the patient with a full explanation that the conversion to voluntary status may result in a prohibition against firearm purchase. A copy of the physician's Finding and Certification must be retained in the individual's clinical record.

Baker Act Receiving Facility Administrators (or their designees)

The physician must document the below finding and certification:

An individual on involuntary status is:

- found competent to consent to treatment and is not released from the facility, and
- desires to transfer to voluntary status, and
- is found by the physician to be imminently dangerous,

is permitted to convert from involuntary to voluntary status.

Facility staff should fully explain to the individual that the transfer to voluntary status may result in a prohibition against firearms purchases and obtaining or retaining a concealed weapons permit. The form titled "Patient's Notice and Acknowledgement" found on page S-19 can be used for this purpose. A copy of the signed and witnessed "Notice and Acknowledgment" form must be retained in the individual's clinical record.

Staff will submit to the Administrator of the Receiving or Treatment Facility the following if a Petition for Involuntary Inpatient Placement has already been submitted to the Clerk of Courts:

- Cover Sheet
- Physician's Finding and Certification
- Patient's Notice and Acknowledgement Form
- Application for Voluntary Admission
- Notification of Withdrawal of Petition (if a petition has already been submitted to the court)

The packet of forms must be filed within 24 hours of the decision for the individual to convert to voluntary status.

If the decision is made within 24 hours prior to the hearing, the notification must be made immediately by phone to all required parties, followed by submission of the written notice.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility with the clerk of the court. No fee shall be charged for this filing.

Clerks of Court

Upon receipt of the packet of forms from a Baker Act Receiving or Treatment Facility, the Clerk will assign a case number and other activities routinely done upon petition filing. Within 24 hours, the clerk will submit the petition and other related forms to a judge or magistrate for review.

The Rule of Judicial Administration as amended in April 2013 defines how hours and days are computed for court use when a statute does not specify how it is to be done. When a law states a period of time in "hours," the computation of hours is as follows:

- Begin counting immediately on the occurrence of the event that triggers the period;
- Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
- If the period would end on a Saturday, Sunday, or legal holiday, or during any period of time extended through an order of the chief justice, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice.

Judges or Magistrates

Upon receipt of the petition and related forms from the Clerk of Court, the Judge or Magistrate must review the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to self or others.

A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to FDLE within 24 hours.

Clerks of court shall submit these records of an individual converting from involuntary to voluntary status to the Florida Department of Law Enforcement within 24 hours (as defined above) in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

Other records related to firearm prohibition must be submitted by the court within one month after the rendition of the adjudication or commitment, including:

- Ordered to Involuntarily Substance Abuse assessment (397.6818, FS)
- Ordered to Involuntary Substance Abuse Treatment (397.6957, FS)
- Ordered to Involuntary Inpatient Placement (394.467(6), FS)
- Ordered to Involuntary Outpatient Placement (394.4655, FS)
- Adjudicated incapacitated (744.331,FS) or any similar law of any other state
- Acquittal by reason of insanity of a person charged with a criminal offense
- Judicial finding that a criminal defendant is not competent to stand trial
- Deemed a habitual offender under s. 856.011(3) FS or other similar laws of Florida
- Convicted under s. 790.151
- Has had two or more convictions under s. 316.193 or similar laws of any other state

Florida Department of Law Enforcement

In order to check for these conditions, the department (FDLE) 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.

FDLE is authorized to disclose data collected 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 this 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.

Relief from a Firearm Disability

Persons who have had their right to purchase a firearm may petition the court for relief of this firearm disability, as provided in 790.065(2)(d), F.S.

The provisions of chapter 790 apply to persons for whom the court has ordered specified interventions, including:

- Ordered to Involuntarily Substance Abuse Assessment and Stabilization (397.6818, F.S.)
- Ordered to Involuntary Substance Abuse Treatment (397.6957, F.S.)
- Ordered to Involuntary Inpatient Placement (394.467(6), F.S.)
- Ordered to Involuntary Outpatient Placement (394.4655, F.S.)
- Adjudicated incapacitated (744.331,FS) or any similar law of any other state
- Acquitted by reason of insanity of a person charged with a criminal offense (916, F.S.)
- Judicial finding that a criminal defendant is not competent to stand trial (916, F.S.)

A person who has been adjudicated "mentally defective" or committed to a mental institution, as those terms are defined in the law, may petition the circuit court that made the adjudication or commitment, or the court that ordered that the record be submitted to FDLE, for relief from the firearm disabilities imposed by such adjudication or commitment.

A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition.

The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order.

The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be

likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

Upon receipt of proper notice of relief from firearm disabilities FDLE shall delete any mental health record of the person granted relief from the 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.

If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

Included in this appendix are five ***Flow Charts*** that reflect the decision points to be made:

1. Receiving Facility Process
2. Admission by Voluntary Status
3. Admission by Involuntary Status
4. Firearm Prohibition Process
5. Petition for Relief for Relief from Firearm Disability

Also included in this appendix is a series of ***sample forms*** that can be used to implement the provisions of this legislation:

1. Cover Sheet to be filed by a Receiving or Treatment Facility Administrator to the Clerk of Court
2. Finding and Certification by an Examining Physician of Person's Imminent Dangerousness
3. Patient's Notice and Acknowledgment
4. Application for Voluntary Admission of an Adult to a Receiving Facility
5. Notification to Court of Withdrawal of Petition for Hearing on Involuntary Inpatient or Involuntary Outpatient Placement
6. Order of Court Present Record of Finding to FDL for Requiring further Documentation on Transfer to Voluntary
7. Petition for Relief from Firearm Disabilities Imposed by the Court
8. Order on Petition for Relief from Firearm Disabilities

Firearm Prohibitions Frequently Asked Questions

STATE STATUTE

1. What state law requires the submission of mental health data to the Florida Department of Law Enforcement (FDLE) for the purpose of firearm purchase approval?

Section 790.065(2)(a), Florida Statutes, Sale and delivery of firearms, outlines the firearm purchase prohibition for persons adjudicated as mentally defective or committed to a mental institution. The terms are defined in law as:

> "Adjudicated mentally defective" Refers to 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.
>
> "Committed to a mental institution" Refers to an 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; or…

Chapter 2013-249, Laws of Florida, effective July 1, 2013, further amended the definition of "committed to mental institution" to include voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under Section 394.463, F.S., based on the following conditions being met:

- 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., or the examining

physician certified 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 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 and the person acknowledged such notice in writing;
- A judge or a magistrate has reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

2. What is the Mental Competency (MECOM) database?

The law authorizes the Florida Department of Law Enforcement (FDLE) to establish and maintain "an automated database [designated as the Mental Competency (MECOM) 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 database contains information submitted by the Clerks of Court.

FDLE is required to check this database before approving the sale of a firearm by a licensed dealer, to determine if the potential purchaser is prohibited by federal law from purchasing (or possessing) a firearm because he or she has been adjudicated mentally defective or committed to a mental institution. The data entered by the Clerks will be uploaded to the National Instant Criminal History Background Check System (NICS), maintained by the Federal Bureau of Investigation (FBI), to comply with federal law requiring background checks on prospective firearm purchasers. The data is included in the NICS Index which is used nationwide in determining firearm purchase eligibility. The MECOM database is also used by the Florida Department of Agriculture and Consumer Services, Division of Licensing (DOACS), for the purpose of issuing or retaining a concealed weapon / firearm license.

MECOM DATABASE

3. Can the mental health data be submitted to FDLE in more than one way?

Entry by the Clerk directly into the MECOM database is the preferred method. FDLE has assisted Clerks by accepting faxes, and mailed or emailed submissions because of the criticality of the information. FDLE will continue to so as resources permit; however, the responsibility to enter the data remains with the Clerks.

4. What are the mandated fields for MECOM database entry?

The fields necessary for entry into the MECOM database include: name, any known alias or former name, sex, date of birth and uniform case number (UCN). The MECOM database is designed to reject records that do not meet the minimum identification requirements outlined in the law. Because the system is structured to allow for searching records based on name and other personal identifying information, the more information provided to FDLE, the easier it will be to identify an individual attempting to purchase a firearm. For this reason, the Clerks' offices may receive calls requesting additional data to assist in making informed decisions.

5. What kind of information would be beneficial as additional record subject identifiers?

If available, the subject's social security number, place of birth, driver's license number, and last known address would be helpful as additional record subject identifiers.

6. What timeframe does the information need to be entered or submitted into the MECOM database?

By law, "Clerks of court are required to submit these records to the department within 1 month after the rendition of the adjudication or commitment." These records would include:

- Ordered to Involuntarily Substance Abuse assessment (397.6818, F.S.)
- Ordered to Involuntary Substance Abuse Treatment (397.6957, F.S.)
- Ordered to Involuntary Inpatient Placement (394.467(6), F.S.)
- Ordered to Involuntary Outpatient Placement (394.4655, F.S.)
- Adjudicated incapacitated (744.331,F.S.) or any similar law of any other state
- Acquittal by reason of insanity of a person charged with a criminal offense
- Judicial finding that a criminal defendant is not competent to stand trial
- Deemed a habitual offender under s. 856.011(3) F.S. or other similar laws of Florida
- Convicted under s. 790.151, F.S.

- Has had two or more convictions under s. 316.193, F.S. or similar laws of any other state

However, when persons committed to a mental institution following an involuntary examination under Section 394.463, F.S., Clerks must submit the record to FDLE within 24 hours of the order. See the section on Chapter 2013-249, Laws of Florida, for further details about the new reporting requirements.

7. **If a person is the subject of more than one qualifying adjudication of mental defectiveness or commitment to a mental institution, should data on the later adjudications or commitments continue to be entered in the MECOM database?**

   Yes. The most recent data will be displayed when the database is queried. It is important for all persons involved in the firearm purchase background check process to have access to the most complete, current, and accurate information. Such information will be vital in making the correct decisions at the initial approval stage, during any appeal of a denial, and when removal of a name from the database is requested.

8. **How do Clerks and their employees access the MECOM database?**

   The MECOM database is available through the Florida Criminal Justice Network (CJNet). The access form found on the first page of the database must be completed and then faxed, mailed, or e-mailed to FDLE, after which a password and username will be assigned to the individual. As a security precaution, the password and user (logon) name should not be shared with anyone else. Whenever information is added or updated in the database, the system automatically records the date and identifies the person that updated or added the information by his or her logon name.

9. **If an error is found in the MECOM database, should the Clerks correct the error?**

   If an error is identified, contact the Firearm Purchase Program at (850) 410-8139 for correction.

10. **Is the data in the MECOM database public record?**

    FDLE understands civil orders (adjudication or commitment) to be confidential. Under the law, if the records submitted by the Clerks are confidential or exempt from disclosure in the custody of the courts, they will retain that status in the MECOM database. See the Florida Attorney General's Government-In-The-Sunshine Manual (available online), Part II, D, 11. FDLE is authorized by the law to disclose information to the Department of Agriculture and Consumer Services for determining the eligibility of an applicant for a concealed weapons license. FDLE is also authorized to disclose data to federal or state agencies with regard to the lawfulness of the sale or transfer of a firearm.

11. **Who should be called with questions about the MECOM database?**

    Questions should be directed to the Firearm Purchase Program at (850) 410-8139.

SUBSTANCE ABUSE

12. **Does the law apply to substance abuse?**

    Yes, the definition of "committed to a mental institution" in the law includes "commitment for substance abuse" and refers to "involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957."

13. **Should all persons detained or held under the Baker or Marchman Acts be reported to FDLE?**

    Only persons who are committed to a mental institution or adjudicated mentally defective should be entered into the MECOM database. If such a court order was not issued as a result of the Baker or Marchman Acts, persons should NOT be entered into the MECOM database.

14. **Should data on persons who voluntarily admit themselves for substance abuse treatment be entered into the database?**

    No, unless there is further action by a physician and court under the process established by Chapter 2013-249, Laws of Florida. See the section on Chapter 2013-249, Laws of Florida, for further details about the new requirements.

15. **Should defendants who have been referred to Drug Court be entered in the database?**

    Referral to Drug Court, alone, is not a sufficient basis to enter a person in the MECOM database. See Question 12.

16. **Should an Order for Involuntary Treatment, pursuant to Section 397.6818, Florida Statutes, which orders the subject to attend an outpatient treatment program, such as AA meetings or group therapy sessions, be entered into the database?**

    An order for involuntary assessment and stabilization under Section 397.6818, Florida Statutes, qualifies for entry in the database. Following involuntary assessment and stabilization, per Section 397.6822, Florida Statutes,

the client may "where appropriate, [be] refer[red]… to another treatment facility or service provider, or to community services." Such referral could include attending AA meetings, group therapy sessions, etc.

17. Where a Petition for Involuntary Treatment for Substance Abuse is filed under Chapter 397, Florida Statutes, and the Respondent signed a Waiver of Hearing authorizing the Court to enter an Order for Involuntary Treatment, should such an order be entered into the database?

A court order placing someone in a substance abuse treatment program under the authority of Section 397.6957, Florida Statutes, is a prohibitor for the purchase of a firearm and should be entered into the database. The waiver of hearing does not negate the effect of the order.

JUVENILES

18. Should juveniles who are not able to stand trial because of their age be entered into the MECOM database?

No. If a minor defendant is found to be "incompetent" to proceed solely because of his or her age, the resulting order is not considered to be an adjudication of mental incompetency and does not qualify for entry into the MECOM database.

19. Should juveniles who have been found mentally incompetent be entered into the MECOM database?

The federal law which prohibits a person "who has been adjudicated as a mental defective or who has been committed to a mental institution" from purchasing a firearm, 18 U.S.C. section 922(g)(4), does not mention an age limit for such adjudication or commitment, nor does the expanded definition of this phrase, found at 27 C.F.R. section 478.11. Accordingly, it has been concluded that an adjudication or commitment of a minor meeting the requirements of the law should be reported.

CAPACITY/COMPETENCY

20. Should an order determining someone totally incapacitated, which does not refer to Section 744.331, Florida Statutes, be entered into the database?

An order determining someone to be totally incapacitated as authorized under Section 744.331, F.S., would qualify for entry, even if a different (or no) statute is cited.

21. If a defendant is found incompetent to stand trial, should he or she be entered into the database? What happens if the defendant is later found competent to stand trial?

If a defendant is found incompetent to stand trial by the court, that should be entered in the MECOM database. If the defendant is later determined to be competent to proceed to trial, that fact alone will not authorize the removal of his or her name from the database. The law authorizes a process for restoration of firearm rights following loss due to, for example, a finding of incompetency to stand trial. The outcome of the trial may or may not impose a separate firearm purchase prohibitor (such as, e.g., a felony conviction).

RELIEF FROM DISABILITY

22. How can a person be removed from the MECOM database?

A process for restoration of firearm rights, also referred to as "Relief from Disability" is authorized at Section 790.065(2)(a)4.d, F.S., which could allow for the removal of persons from the MECOM database.

23. Is the process for removal from the MECOM database automatic following the restoration of firearm rights?

No, "upon receipt of proper notice of relief from firearm disabilities granted [by a court]" FDLE will remove the subject from the database; the process is not automatic.

24. If a person believes his or her name should be removed from the database, or needs information in this regard, to whom should the Clerk's office direct him or her?

Contact the Firearm Purchase Program at (850) 410-8139. The person should be referred to Section 790.065, F.S, for the legal basis for removal.

NEW PROVISIONS OF CHAPTER 2013-249, LAWS OF FLORIDA

25. How did this law amend Section 790.065, Florida Statutes, Sale and Delivery of Firearms?

Chapter 2013-249, Laws of Florida, amended the definition of "committed to mental institution" to include voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under Section 394.463, F.S., based on the following conditions being met:

- 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., or the examining physician certified 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 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 and the person acknowledged such notice in writing;
- A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

26. What are examples where the new law does NOT apply?

The law does not apply to persons in the following circumstances:

- Persons entering a facility on voluntary status and remaining on voluntary status regardless of their potential imminent dangerousness. The Baker Act law and multiple appellate cases place no duty on mental health professionals to initiate involuntary status even if the criteria for involuntary status are documented.
- Persons entering a facility on involuntary status on the basis of self-neglect instead of active danger, regardless of the severity of their mental illnesses.
- Persons on involuntary examination status who are discharged because they fail to meet any one of the involuntary placement criteria, without being converted to voluntary status.
- Persons whose potential for "dangerousness" is not considered by a physician as "imminent"
- Persons whose hearing on involuntary placement takes place and the petition is dismissed by the court because a less restrictive setting is found, regardless of the criteria related to active danger.
- Persons on involuntary examination status who are first taken to hospitals not designated by DCF as receiving facilities for examination or treatment of medical conditions and are released directly by a physician or psychologist or are transferred by such hospitals to voluntary status before transfer to a designated receiving facility.
- Persons subject to the involuntary provisions of the Marchman Act (397, FS) unless ordered by the court to undergo involuntary assessment and stabilization or involuntary treatment.

27. What is the duty of physicians at receiving or treatment facilities?

The physician or clinical psychologist must, without unnecessary delay, conduct and document the Mandatory Initial Involuntary Examination, including:

- Review of person's recent behavior;
- Review "Transportation to Receiving Facility" form (#3100)
- Review one of the following:
  - » "Ex Parte Order for Involuntary Examination" or
  - » "Report of Law Enforcement Officer Initiating involuntary Examination" or
  - » "Certificate of Professional Initiating Involuntary Examination"
- Conduct a brief psychiatric history; and
- Conduct a face-to-face examination to determine if person meets criteria for release.

28. Under the new requirements of the law, what forms must the receiving or treatment facility file with the Clerk of Court?

Upon meeting the conditions, the administrator of the receiving or treatment facility must file the following forms with the Clerk of Court for the county in which the involuntary examination occurred:

- Finding and Certification by an Examining Physician of Person's Imminent Dangerousness
- Patient's Notice and Acknowledgement of firearm disabilities
- If applicable, Notification to Court of Withdrawal of Petition for Hearing on Involuntary Inpatient or Involuntary Outpatient Placement.

29. When must the receiving or treatment facility file the forms with the Clerk of Court?

Forms must be filed with the Clerk of Court within 24 hours of the patient's certification as an imminent danger and agreement to transfer to voluntary status.

30. When must the Clerk of Court present the filed records to a judge or magistrate?

The Clerk of Court is required to present the records to a judge or magistrate within 24 hours after receipt of such records from the receiving or treatment facility.

31. If a judge or magistrate issues an order, when must the Clerk of Court enter the information into the MECOM database?

The law requires the Clerk of Court to submit the record to FDLE, by entering the information directly into the MECOM database, within 24 hours of the order.

32. What is meant by the timeframe of 24 hours for the Courts?

The Rule of Judicial Administration, as amended in April 2013, defines how hours and days are computed for court use when a statute does not specify how it is to be done (only applies to courts – not to mental health facilities). When a law states a period of time in "hours", the computation of hours is as follows:

- Begin counting immediately on the occurrence of the event that triggers the period;
- Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
- If the period would end on a Saturday, Sunday, or legal holiday, or during any period of time extended through an order of the chief justice, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice.

33. What must the patient's notice and acknowledgment include?

Law provides the notice must include the following language:

> "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."

34. Am I required to use the forms included in the Appendix?

No. Receiving and treatment facilities may develop their own forms. The sample forms included in the Appendix are provided as examples, but they may also be used if a facility chooses to do so.

35. What do we do if an individual refuses to sign the acknowledgement form that includes the notice that he or she may be prohibited from purchasing firearms or having a concealed weapons permit?

A mere refusal to sign the acknowledgment form doesn't constitute the basis for pursuing a Baker Act involuntary placement (BA-32). A change in the Baker Act criteria would have to be enacted for this to happen. Therefore, it is important that the notice/acknowledgment form be presented to the patient prior to any transfer to voluntary status. If the patient "refuses" to sign the form, the psychiatrist can consider this refusal in his/her decision as to whether the patient continues to be competent to make treatment decisions. Pursuing involuntary placement requires that two psychiatrists have determined, among other criteria, that the individual "has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment or is unable to determine for himself or herself whether placement is necessary."

Resources

» Department of Children and Families
850-717-4791

» Florida Court Clerkes and Comptrollers
850-921-0808

» Office of the State Courts Administrator
850-922-5081

» Florida Psychiatric Society
800-521-7465

» Florida Council for Community Mental Health
850-488-1801

» Florida Department of Law Enforcement Firearm Purchase Program
850-410-8139