

Mental Health Firearm Disqualifiers
Section 790.065, F.S.

Purchase of Firearms by Mentally Ill Persons
 HB 1355 (2013 Legislative Session)
 Chapter 2013-249, Laws of Florida

Implementation Workgroup

Background

Florida Department of Law Enforcement (FDLE) Firearm Purchase Program (FPP)

Conducts required background checks to prevent purchase of firearms by persons who are ineligible under federal and state law to receive them.

Brady Handgun Violence Prevention Act of 1993

Created the National Instant Criminal Background Check System (NICS) to quickly provide information used to make determinations for eligibility to purchase firearms. NICS is a national system maintained by the FBI.

Background

Mental Competency (MECOM) Database

- Established by FDLE in 2007 to receive and store orders entered by the Clerks of Court on persons 'adjudicated mentally defective' or 'committed to a mental institution' or a judicial finding of incapacity.
- Information is uploaded to National Instant Criminal Background Check System (NICS).
- Used in determination process for firearm sales nationwide.
- Shared with the Florida Department of Agriculture and Consumer Services for the issuance and retention of concealed weapon licenses.

Reporting Requirements Since 2007

F.S. 790.065 (2)(a)

- Defines who should be entered into MECOM.
- Requires FDLE to ‘compile and maintain an automated database.’
- Requires the Clerks of Court to submit records within 1 month after the rendition of the adjudication or commitment.
- Requires at a minimum the reporting of name (along with alias or former name), sex, and date of birth of subject.

Who Does This Apply 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 others; or
- Lacks the mental capacity to manage his or her own affairs;
- This includes a judicial finding of incapacity (guardianship per s. 744.331, F.S.); and
- Acquittal by reason of insanity or finding that the defendant is not competent to stand trial (s. 916.12, s. 916.13, and s. 916.15, F.S.)

Who Does This Apply To?

- Involuntary commitment;
- Commitment for mental defectiveness, mental illness or substance abuse;
- Involuntary inpatient or outpatient placement (Baker Act, s. 394.467 or 394.4655, F.S.);
- Involuntary assessment and stabilization (Marchman Act, s. 397.6818, F.S.);
- Involuntary substance abuse treatment (Marchman Act, s. 397.6597, F.S.)

Who This Does Not Apply To?

...but does not include a person

- In a mental institution for observation;
- Discharged from a mental institution after an initial review by a physician;
- Voluntary admission to a mental institution.

New Reporting Requirements

HB 1355 (2013 Legislative Session)

Became law on July 1, 2013, amending 790.065, F.S., providing conditions under which an individual who has been allowed to transfer to voluntary status in lieu of court-ordered involuntary commitment after being admitted for involuntary examination at a Baker Act receiving facility and is certified by a physician to be of imminent danger, may be prohibited from purchasing firearms or retaining or applying for a concealed weapon or firearm license.

Who This Does Not Apply To?

- Persons entering and remaining on voluntary status regardless of potential dangerousness.
- Persons entering on basis of self-neglect.
- Persons discharged because they fail to meet involuntary placement criteria.
- Persons whose potential for 'dangerousness' is not considered by a physician as 'imminent'.
- Persons whose petition is dismissed by the court because a less restrictive setting is found.

Who This Does Not Apply To?

- Persons taken to a facility not designated by DCF as a receiving facility and are released or transferred to voluntary status before transfer to a DCF designated receiving facility.
- Persons subject to the involuntary provisions of the Marchman Act unless ordered to undergo involuntary assessment and stabilization or involuntary treatment.
- Law applies to future gun purchases and retaining or obtaining concealed weapons or firearms license.

New Reporting Requirements

Chapter 2013-249, Laws of Florida (HB 1355) amended s. 790.065, F.S., effective 7/1/2013, to include:

‘...voluntary admission (*transfer*) to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, F.S., where each of the following conditions have been met...’

New Reporting Requirements

Condition A

Examining physician finds the person is an imminent danger to himself or herself or others;

Condition B

Examining physician certifies that if the person had not agreed to transfer from involuntary to voluntary treatment:

- A petition for involuntary outpatient or inpatient treatment would have been filed (s. 394.463(2), F.S.); or
- A petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

New Reporting Requirements

Condition C

Before agreeing to voluntary treatment the person:

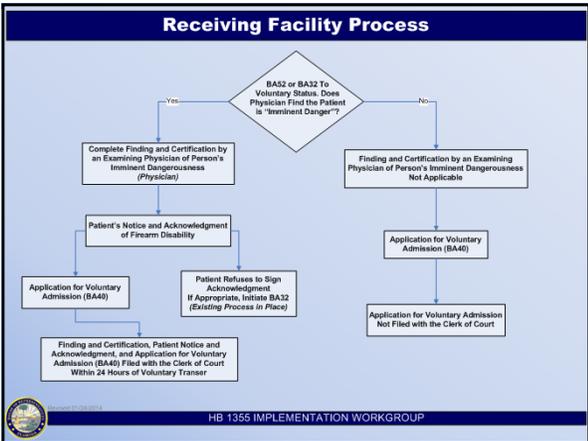
- Received written notice of the **finding and certification**;
- Received written notice that as a result of the finding, he or she may be **prohibited from purchasing a firearm and may not be eligible to apply for or retain a concealed weapon license**;
- **Acknowledged** the notice in writing.

New Reporting Requirements

Condition D

A judge or magistrate has:

- Reviewed the record classifying the person as an imminent danger; and
- Ordered such record be submitted to the Florida Department of Law Enforcement.



Petition for Relief from Firearm Disability (Page 1)

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

IN RE: _____ CASE #: _____
DIVISION: _____

**PETITION FOR RELIEF FROM FIREARM
DISABILITIES IMPOSED BY THE COURT**

1. THIS MATTER is presented to the Court on _____ (date) by Petitioner, _____ on a Petition for Relief from Firearms Disabilities imposed by the Court on _____.

2. The Petitioner was ordered for:

Ordered to Involuntarily Substance Abuse Assessment and Stabilization (s. 397.6818, F.S.) on _____

Ordered to Involuntary Substance Abuse Treatment (s. 397.6997, F.S.) on _____

Ordered to Involuntary Inpatient Placement (s. 394.467(5), F.S.) on _____

Ordered to Involuntary Outpatient Placement (394.4655, F.S.) on _____

Found by Court to be of Imminent Danger but permitted by physician to transfer to voluntary status in lieu of involuntary placement order above (s. 750.055, F.S.) on _____

Adjudicated incapacitated (s. 744.331, F.S.) or any similar law of any other state on _____

Acquitted by reason of insanity (s. 916.15, F.S.) of a person charged with a criminal offense on _____

Judicial finding that a criminal defendant is not competent to stand trial (s. 916.12, F.S.) on _____

3. 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 as follows: _____

Petition for Relief from Firearm Disability (Page 2)

4. Based upon these facts, THE FOLLOWING IS REQUESTED:

a. The firearm disability imposed dated _____, be set aside and are no further in force and effect.

b. That pursuant to Florida Statute (790.005), 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.

c. That pursuant to Florida Statute (790.005), the Florida Department of Law Enforcement shall delete any mental health record of _____ from the automated database of persons who are prohibited from purchasing a firearm based on court records.

5. Under penalties of perjury, I declare that I have read the foregoing Petition for Relief from the Firearm Disabilities Imposed by the Court and that the facts stated in it are true.

Signature of Petitioner: _____ Printed Name of Petitioner: _____
Date of Birth: _____ Mailing Address: _____
Race: _____ Gender: _____
Social Security Number: _____ City: _____ State: _____ Zip: _____

Name and Address of Attorney for Petitioner (if any):

Petition for Relief from Firearm Disability

- Evidentiary hearing
- Record of hearing by Court Reporter or other court approved electronic means.
- Written findings of fact and conclusions of law.
- Final order issued by the Court
 - Petitioner's reputation;
 - Mental health record;
 - Circumstances surrounding firearm disability and any other evidence;
 - Petitioner not likely to act in a manner dangerous to public safety.

Order on Petition for Relief (Page 1)

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

IN RE: _____ CASE # _____
DIVISION: _____

ORDER ON PETITION FOR RELIEF FROM FIREARM DISABILITIES

THIS MATTER is presented to the Court by Petitioner, _____ on a Petition for Relief from Firearm Disabilities imposed by the Court as a result of the _____ order issued by the Court on _____ (date).

The Court, having heard testimony and having received other evidence, finds as follows:

1. _____ was ordered to _____
2. _____ successfully _____
3. _____ currently lives with _____ works at _____, and _____

Based on the evidence presented and the Court's conclusions derived therefrom, IT IS THEREFORE ORDERED AND ADJUDGED that:

The firearm disability imposed on _____ shall remain in force and effect and the petition filed on _____ (date) is DENIED.

The firearm disability imposed on _____ on _____ (date) is SET ASIDE and is no further in force and effect.

Order on Petition for Relief (Page 2)

That pursuant to Florida Statute 790.065, the Court grants relief requested in the petition. With respect to evidence presented as to petitioner's reputation, mental health, the absence of criminal record that would preclude gun ownership, the firearm disability, and other evidence in the record, 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.

That pursuant to Florida Statute 790.065, the Florida Department of Law Enforcement shall delete any mental health record of _____ from the automated database of persons who are prohibited from purchasing a firearm based on court records of _____

DONE AND ORDERED in _____ County, Florida this ____ day of _____, 20__.

Circuit Court Judge

Full Name of Petitioner: _____
Mailing Address: _____
City State Zip
Date of Birth: _____
Race: _____ Gender: _____
Social Security Number: _____

Petition for Relief from Firearm Disability

- Firearm disability relief granted:
 - Proper notice of relief;
 - FDLE shall delete records from the MECOM database.
- Firearm disability relief denied:
 - Petitioner may not petition for relief again for one year.
 - Petitioner can seek judicial review from the District Court of Appeals.

Submission of Records into MECOM

- Mandated fields for MECOM entry
 - Name, sex, date of birth, and uniform case number (UCN).
- Record searches are based on name and other personal identifying information.
- Additional record subject identifiers
 - Includes social security number, place of birth, driver’s license number, last known address, and others listed in the MECOM database.
- Providing additional identifiers further assists with the identification of an individual prohibited from purchasing a firearm.

Resources

- Department of Children and Families
(850) 717-4791
- Florida Court Clerks 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
