

# Firearm Background Checks



Marjory Stoneman Douglas High School  
Public Safety Commission

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# FDLE – Firearm Eligibility Bureau

## Mission Statement

The Firearm Eligibility Bureau is committed to serving the public by ensuring law-abiding citizens and eligible visitors are able to legally obtain firearms while preventing transfers to individuals who are prohibited.





# Laws that Govern Firearm Transfers and Possession

National Firearm Act of 1934 – Regulates Class III firearms (machine guns, short barreled firearms)

Gun Control Act of 1968 – created categories of prohibited persons

Florida Statute 790.065 (1989) – established statewide background check requirement

Brady Handgun Violence Prevention Act of 1993 – established national background check requirement effective November 1998





# Purchase vs. Possession

- **Title 18, United States Code 922(g)(1)-(9)**
  - Prohibits purchase and possession
- **Title 18, United States Code 922(n)**
  - Prohibits purchase but not possession
- **Florida Statute 790.065 – Delivery & Sale of Firearms**
  - Requirements regarding purchase
- **Individual statutes prohibit possession - examples:**
  - 790.23 – adult convicted of a felony
  - 790.23(1) – juvenile found delinquent of a felony
  - 790.233 – domestic violence injunction
  - 790.041 – risk protection order
  - 790.064 – person adjudicated mentally defective



# Registry Prohibition

- F.S. 790.335 prevents government entities from creating or maintaining a list of legal firearm owners or a 'firearm registry'.
- Firearm Owners' Protection Act of 1986 is a federal law prohibiting a universal, national gun registry.





# Firearm Background Checks

## Federal Disqualifiers (Title 18 USC 922):

- Felony Conviction (or equivalent)
- Fugitive From Justice
- Unlawful User of Controlled Substance
- Adjudicated Mentally Incompetent
- Illegal Alien or Unlawfully in US
- Dishonorable Discharge from Armed Forces
- Renounced US Citizenship
- Respondent to Protection Order
- Convicted of Misdemeanor Domestic Violence
- Under Indictment/Information for Felony





# Firearm Background Checks

## State Disqualifiers:

- Juvenile Prohibitions (until age 24 or until expunged)
- Protection Orders – expanded from Federal law
- Adjudication Withheld – 3 years after completion of sentencing provisions
- Recent Arrest for Dangerous Crime or Enumerated Offense not yet disposed in court



# Firearm Background Checks

## Mental Health Prohibition

### Prohibiting

- Adjudicated mentally incompetent by court
- Court ordered to treatment (including substance abuse)
- Mentally unable to proceed in criminal case
- Not guilty by reason of insanity

### Not Prohibiting

- Persons who voluntarily seek treatment
- Held for observation then released
- Physician diagnosis alone (absent a court order)





# Firearm Background Checks

## Reporting Mental Health Records

- Determination made by Court
- Recorded by Clerk of Court
- Clerk of Court submits electronically within 30 days of adjudication
- Person record created in MECOM
- MECOM interfaces with NICS Index to make record available nationally
- Removed upon order by the Court (Relief from Firearm Disability)



# Firearm Background Checks

## Risk Protection Order

Prohibits purchase

- Petitioned by Law Enforcement Agency
- Ex Parte (temporary) order until hearing
- Hearing – final order up to 12 months
- Can be extended
- Respondent can petition for order to be removed
- Notification to law enforcement agency if purchase is attempted by respondent



# Firearm Background Checks

## Risk Protection Order

Prohibits possession

- Surrender of firearms on person at time of contact with law enforcement
- Voluntary surrender of additional firearms
- Law Enforcement may seek a warrant to seize additional firearms not surrendered
- Firearms returned to respondent when order expires or is dismissed
- Background check before firearms are returned





# Firearm Background Checks

**Approval** – Firearm may be transferred. Personal information is confidential and exempt and cannot be disseminated.

**Decision Pending (status)** – not a final decision, research is in progress. Can share information for purpose of research/complete transaction.

**Non-Approval** – a final decision subject to appeal. Non-approvals may be disseminated to law enforcement – not a public record.



# Firearm Background Checks

## Senate Bill 7026 – Impact on Background Check Process

1. Requires persons to be at least 21 to purchase a long gun (same as handgun). *(Exceptions to age for certified law enforcement officers, correctional officers, and US Service Members who are at least 18.)*
2. Extended statewide waiting period to all firearms to 3 days or until completion of background check.  
*(Exceptions to waiting period for certified officers, US Service Members, hunter safety & hunting license, and trade in of another firearm.)*
3. Created Risk Protection Order as a firearm disqualifier.



# Gun Show Loophole

## **“Gun Show Loophole”**

- FFLs are required to submit a background check regardless of location.
- No background check requirement for transfers between private parties (non-licensed).
- Private Collector or Firearm Dealer?
- Florida Constitution Article VIII, Section 5(b) authorizes counties to require a background check and up to 5 day waiting period for firearm sales when any part of the transaction is conducted on property to which the public has the right of access.

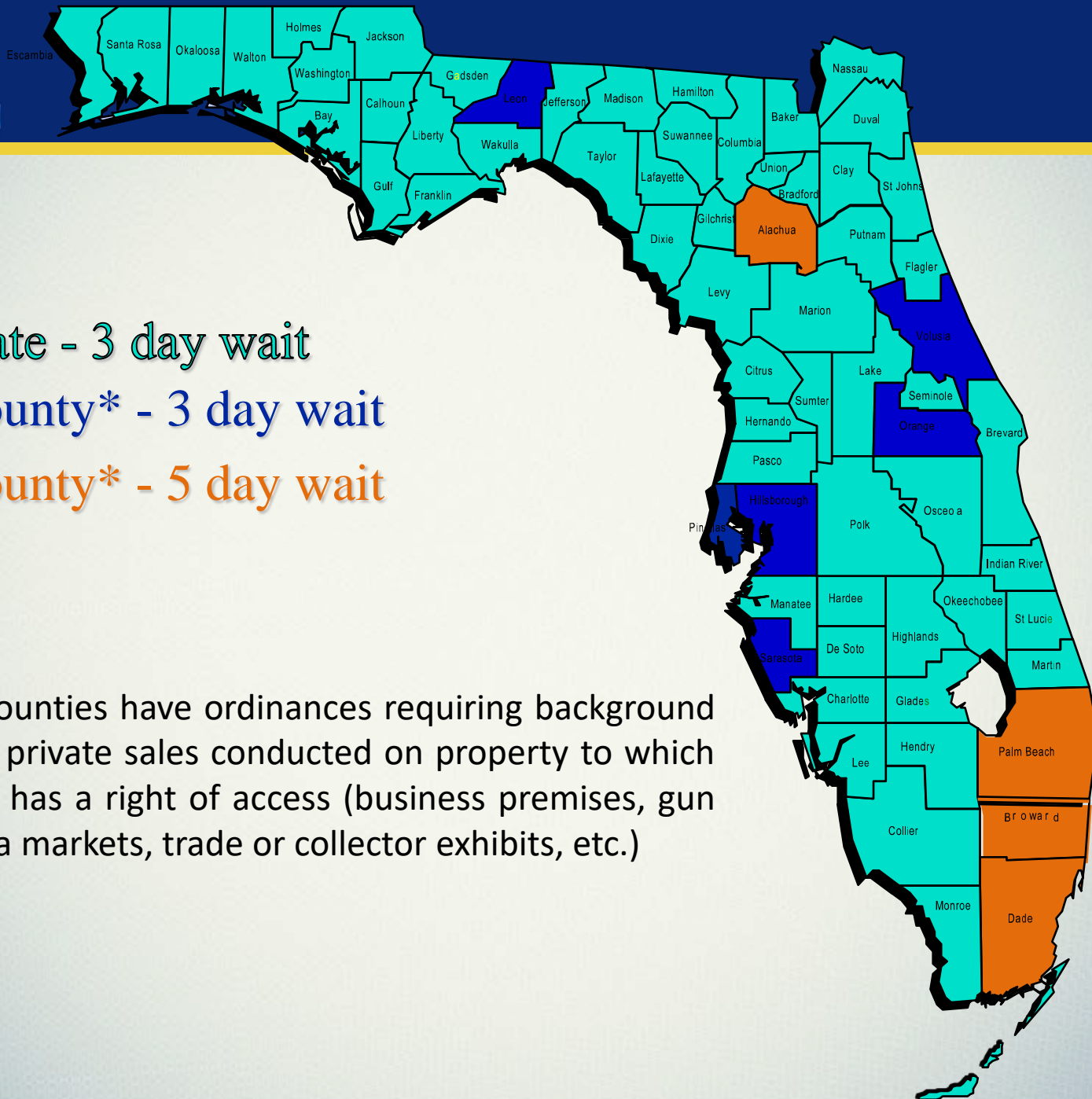




# County Ordinances

- May require a waiting period up to 5 days on handguns and long guns
- May require a background check for all sales conducted on property to which the public has the right of access
  - FFL to facilitate the sale
  - CWP Holders are exempt
  - Is enforced by county officials





State - 3 day wait

County\* - 3 day wait

County\* - 5 day wait

\* These Counties have ordinances requiring background checks on private sales conducted on property to which the public has a right of access (business premises, gun shows, flea markets, trade or collector exhibits, etc.)



# Firearm Background Checks

Firearm Eligibility Bureau – (850)410-8139

Firearm Purchase Program

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