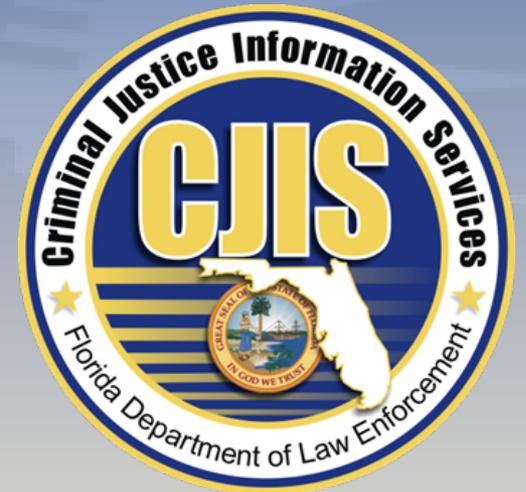


Firearm Background Checks



Marjory Stoneman Douglas High School
Public Safety Commission

July 2018



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):

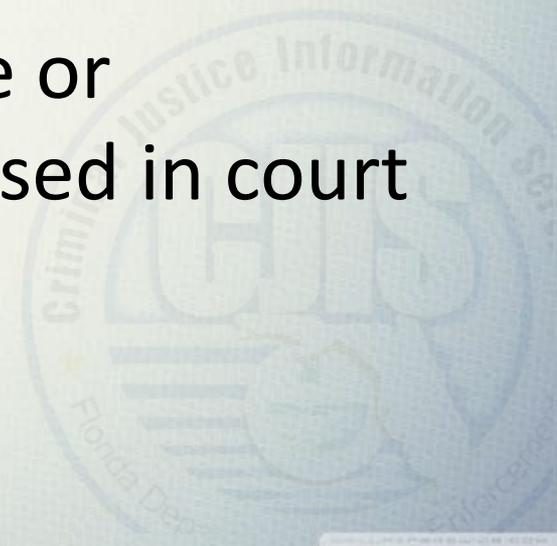
- Felony Conviction (or equivalent)
- Fugitive From Justice
- Unlawful User of Controlled Substance
- Adjudicated Mentally Incompetent
- Illegal Alien or Unlawfully in US
- Dishonorable Discharge from Armed Forces
- Renounced US Citizenship
- Respondent to Protection Order
- Convicted of Misdemeanor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

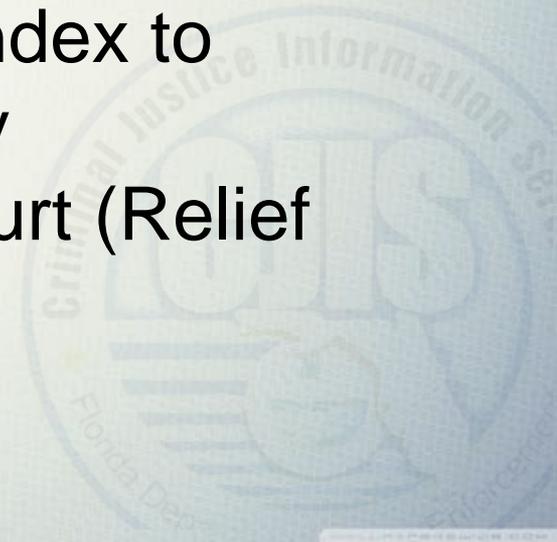
- Persons who voluntarily seek treatment
- Held for observation then released
- Physician diagnosis alone (absent a court order)



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





Firearm Background Checks

Firearm Eligibility Bureau – (850)410-8139

Firearm Purchase Program

firearmpurchasing@fdle.state.fl.us

Eligibility Research Unit – Mental Health

MECOM@fdle.state.fl.us

