

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1620
 SPONSOR: Criminal Justice Committee
 SUBJECT: Firearm Purchase Program
 DATE: Februray 26, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends the sunset provision on the Firearm Purchase Program from June 1, 2004 to October 1, 2009.

The Program will be reviewed during the 2009 Legislative Session. The October 1 repeal date will provide ample time for FDLE to phase-out the Program should the Legislature decide to discontinue the Program during that Session.

This bill substantially amends the following section of the Florida Statutes: 790.065.

II. Present Situation:

Section 790.065, F.S., which established the Firearm Purchase Program within the Florida Department of Law Enforcement (FDLE) is repealed effective June 1, 2004, unless it is reenacted by the Legislature.

The Firearm Purchase Program performs criminal record checks on potential firearm purchasers who are making the purchase from licensed firearm dealers in Florida.

Federal "Brady Law" Requirements and NICS

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 licensed dealer or redeeming a pawned firearm must first undergo a background check through either the FBI or the state in which the purchase is being made.

NICS provides full service to federal firearms licensees in 31 states and territories. Ten states are currently sharing responsibility with NICS by conducting background checks for handguns only, while the long-gun transfer checks are done by NICS. *FBI NICS Operations Report, May 2003.*

Fourteen states have agencies that act in a point of contact (POC) capacity, Florida being one of those states. Point of contact agencies conduct their own background checks for the licensees in their state. FDLE serves as Florida's point of contact agency.

It should be remembered that NICS is only as good as the records entered into the system, and the FBI rejects many records submitted by the states. Records are rejected for a variety of reasons including incomplete disposition histories and smudged or illegible fingerprints.

FDLE is currently reviewing offender records to determine if they meet the criteria for non-approval of a firearm purchase, and therefore should be loaded into the NICS Prohibited Persons Index system. The Index is one of the databases searched by NICS during a background check, and is limited to federal firearm disqualifying information. A review of 150,000 convicted felons not eligible to purchase firearms has been completed and these records have been transmitted to the FBI. Approximately 660,000 records are still under review.

The National Criminal History Improvement Program (NCHIP) exists within the Department of Justice for the purpose of ensuring that accurate records are available for the NICS system, among other databases utilized to enhance public safety and security. In 2002, FDLE received an NCHIP grant in the amount of \$1,369,000 to aid in the collection and transmission of incomplete disposition records to the NICS system. Since 1995 NCHIP has provided nearly \$400 million to the states and will distribute another \$48 million during the fiscal year 2003. *FBI NICS Operations Report, May 2003.*

Additionally, FDLE reports that the FBI rejects up to 500 to 600 fingerprint cards monthly. Since the offender may have records that would prohibit them from purchasing a firearm, the records must be reviewed to see if they should go into the NICS system.

The Brady Law includes some "voluntary requirements" of the states. Although they are strictly voluntary, grant monies are withheld unless the state complies. For that reason FDLE considers those activities as mandatory. The activities include:

- responding to requests from NICS and other state firearm programs to retrieve Florida disposition information which may appear as incomplete on the face of the record. This must be completed within three working days or the sale proceeds.
- continue to review the 500 to 600 records rejected by NICS monthly.
- respond to information-seeking calls from the executive and legislative branches, as well as firearm dealers and purchasers. FDLE estimates approximately 21,000 such calls during the fiscal year 2002-2003.
- process and research appeals from non-approved firearm purchasers where the non-approval is based on a Florida record.

The FDLE Firearm Purchase Program (FPP)

The Firearm Purchase Program (FPP) within the Florida Department of Law Enforcement (FDLE) was created in 1989. The program became operational on February 1, 1991.

All federally licensed firearm dealers, manufacturers, or importers who sell firearms in Florida to persons who are not also federally licensed must:

- obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID.
- collect a fee from the purchaser for processing the criminal history check of the purchaser. The current fee, set forth in Administrative Rule, is \$5.00. (Rule 11C-6.009, F.A.C.)
- contact FDLE by means of a toll-free telephone number to conduct a criminal history check in the Florida Crime Information Center and National Crime Information Center (FCIC/NCIC) systems and other databases available through the FBI.
- receive an approval number from FDLE and record the number on the consent form.

(s. 790.065(1), F.S.)

Florida law prohibits transfer of a firearm 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.,
- 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).

The Firearm Purchase Program is operational and accessible via telephone 12 hours a day, 7 days a week, 363 days a year. During slower hours FPP members are assigned other related tasks. According to FDLE the total non-FPP work averages about 2 percent of staff time.

FDLE reports that the average duration of an inquiry phone call by a dealer is about two minutes. Staff can verify a two minute and 10 second call placed from a local firearm dealer in October 2003.

The Brady Act and rules promulgated thereunder provide that point of contact states such as Florida, are authorized to charge a fee for the required background check. Florida dealers collect

a \$5 fee and forward it to FDLE. The fee was reduced December 1, 2000, from \$8 to the current \$5. FDLE reports that this fee raised approximately \$1,409,452 in fiscal year 2001-2002, and \$1,333,614 in fiscal year 2003-2003. The salaries, benefits, and other costs associated with the Firearm Purchase Program, such as computers and supplies are covered by the fee.

Comparison of FPP and NICS

During the Firearm Purchase Program Reviews and subsequent reenactments in years past, the federal background check system (NICS) was the subject of criticism. This criticism was based on high profile situations like the 1999 Colorado case in which a restraining order (injunction) was not detected by the FBI during a federal background check, enabling a man to buy a gun and kill his three daughters. Because of this case Colorado moved swiftly to re-establish its own background checks.

It is fair to say that since that unfortunate case occurred, the federal system has improved substantially. Indeed there are few differences between the National Instant Criminal Background Check System (NICS) and Florida's Firearm Purchase Program (FPP).

A few of the differences warrant highlighting, however, as lawmakers decide whether to reenact the FPP. These differences are:

- when a purchase is denied, the FBI does not notify local law enforcement where the attempted purchase occurred; FDLE does.
- in the course of a background check, when an active arrest warrant is found, the local sheriff – where the purchase is attempted – is notified by FDLE; the FBI does not do this.
- FDLE is present at approximately 12 gun shows a year, throughout the state, to provide information and conduct instant background checks; the FBI does not offer this service.
- the FBI has the electronic NICS E-Check system whereby dealers may access the background checks via the Internet; FDLE does not currently provide this service, although it may become available depending on the dealer demand and feasibility of blending the technology with NICS through the FBI.
- the FBI retains information on approved purchasers for 3 months; FDLE destroys it within 48 hours of approval.
- there is no fee for the FBI background check; FDLE collects a \$5 fee which pays for the program.
- the FBI conducts further research on all charges that could be domestic in nature (i.e., assault, criminal mischief) by reviewing police reports or other local information that could reveal a domestic relationship between the parties involved; FDLE conducts further research only if there is an indication in the record of domestic violence or other family reference.
- FDLE does not deny “drug users” as the FBI does due to differing statutory bases for deniability.
- although there are differences between Florida's list of prohibiting factors and the Brady list, the Florida law would apply if Florida opts not to continue as a point of contact state, and relies on the NICS system, so long as those provisions remain in the Florida Statute. 18 U.S.C. 922(9)(b).

III. Effect of Proposed Changes:

The bill amends the sunset provision on the Firearm Purchase Program from June 1, 2004 to October 1, 2009.

The Program will be reviewed during the 2009 Legislative Session. The October 1 repeal date will provide ample time for FDLE to phase-out the Program should the Legislature decide to discontinue the Program during that Session.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None anticipated.

VI. Technical Deficiencies:

None.

VII. Related Issues:*Transition from FPP to NICS*

Should the Legislature decide not to reenact the Firearm Purchase Program, there are some issues that bear consideration.

As noted above, the provisions in Florida law that require non-approval of a firearm transaction such as:

- pending court disposition,
- withheld adjudication cases (until 3 years after the completion of the terms of the sentence), and
- recognizing repeat violence injunctions as a particular category, do not appear in the Brady Act and therefore would not continue to be reasons for denial of a firearm purchase unless those particular provisions are reenacted. The Firearm Purchase Program could be discontinued while leaving the other substantive provisions of the Florida Statute in place.

It should also be noted that FDLE predicts it will take 453,000 hours of staff time to complete the on-going task of reviewing the remaining 660,000 offender records for possible inclusion in the NICS Index system. As was previously explained, this review is part of NCHIP, a federally-funded (grant money) program, the purpose of which is to ensure that accurate records exist for the NICS system.

Even if the Legislature opted not to reenact the FPP, this offender record review effort would likely need to be completed for public safety reasons. The citizens of Florida would be looking to the FBI to conduct background checks for firearm purchases in our state, so it stands to reason that the FBI should be provided the most accurate and complete information possible. FDLE suggests that in order to accomplish the review, the FPP should be fully staffed until April 2005.

One administrative detail that would result if the FPP were not reenacted is that the federal firearm licensees in our state would have to be enrolled in the NICS system. This would entail notification of dealers that the FPP will cease to exist, providing ample time for the dealers to enroll with the FBI.

FDLE reports that it anticipates continuing the “voluntary requirements” mentioned previously, such as responding to requests for assistance from other states and NICS, and responding to requests for Florida records for appeal of denial purposes. In order to complete these tasks, FDLE anticipates the need for retaining one supervisor and eight liaison positions in the FPP.

VIII. Amendments:

None.