

DEPARTMENT OF LAW ENFORCEMENT

FIREARM PURCHASE PROGRAM

Operational Audit



EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LAW ENFORCEMENT

Pursuant to Section 20.201(1), Florida Statutes, the Executive Director of the Department of Law Enforcement is appointed by the Governor with the approval of three members of the Cabinet and is subject to confirmation by the Senate. Gerald M. Bailey served as Executive Director during the period of our audit.

The audit team leader was Millicent Burns, CPA, and the audit was supervised by Allen G. Weiner, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, by e-mail at davidvick@aud.state.fl.us or by telephone at (850) 412-2817.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 412-2722; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

DEPARTMENT OF LAW ENFORCEMENT

Firearm Purchase Program

SUMMARY

This operational audit of the Department of Law Enforcement (Department) focused on the Firearm Purchase Program, selected administrative matters, and included a follow-up on the audit findings included in our report No. 2011-094. With respect to the Firearm Purchase Program, our audit disclosed that the information required to be included in the Mentally Defective Database (MECOM Database) was not always timely, accurately, and completely recorded. The MECOM Database includes information provided by the Clerks of the Court of each county for persons who were adjudicated mentally defective or had been committed to a mental institution and, as a consequence, were ineligible under State and Federal law to purchase a firearm.

BACKGROUND

The Department's mission, pursuant to Chapter 943, Florida Statutes, is to promote public safety and strengthen domestic security by providing services in partnership with local, State, and Federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors. In carrying out this mission, the Department is charged with delivering a range of investigative, forensic, and information system services to the State's criminal justice community. The Department is also charged with providing approval or disapproval of firearm purchases.

Under the Department's Firearm Purchase Program (Program),¹ before selling a firearm, all licensed importers, manufacturers, or firearm dealers (dealers)² in the State are to obtain, utilizing a prescribed form,³ certain information from a potential buyer, including the buyer's name, date of birth, and social security or other identifying number, as well as inspect appropriate photo identification. Identifying information obtained by the dealer from the buyer is to be provided to the Department for use in the conduct of a criminal history records check, based upon information included in the Florida Crime Information Center and the National Crime Information Center systems. The Department is to also review Mentally Defective Database (MECOM Database) records available to determine whether the potential buyer has been adjudicated mentally defective⁴ or has been committed to a mental institution by a court. The purpose of these checks is to determine whether information has been recorded which would disqualify the potential buyer, under State or Federal law.

To facilitate criminal history records check requests from the dealers, the Department established a toll-free telephone number which is to be operational seven days a week, with the exception of Christmas Day and New Year's Day, for a 12-hour period from 9 a.m. to 9 p.m. As of May 2012, the Department also offered dealers the option of utilizing the Firearm Eligibility System, whereby dealers could electronically submit potential buyer information and request criminal history record checks.

Upon receipt of the requests, the Department is to provide an approval, nonapproval, conditional approval, conditional nonapproval, or pending nonapproval number to the dealer based on the information shown in the

¹ Section 790.065, Florida Statutes.

² As of February 28, 2013, there were 2,409 active State dealers.

³ United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473 (5300.9) Part 1.

⁴ Adjudicated mentally defective is defined by Section 790.065(2)(a)4.a., Florida Statutes, as 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.

records available to the Department. With respect to the conditional determinations, Florida law provides that if the records show that a potential buyer has been indicted, has had an information filed against her or him for an offense that is a felony under either State or Federal law, had an injunction entered for domestic violence or repeat violence, or has been arrested for a dangerous crime, the Department is to provide the dealer a conditional nonapproval number and determine the disposition of such issues within 24 hours. If the potential buyer is found to not be prohibited from receiving or possessing a firearm, or if the Department cannot determine the applicable disposition information within the allotted time period, the Department is to provide the dealer with a conditional approval number. If the potential buyer is found to be so prohibited, the conditional nonapproval number shall become a nonapproval number. A pending nonapproval number is to be issued when the buyer has had a recent domestic related or felony level arrest (less than six months old) with no disposition from the courts. In the case of a pending nonapproval, the dealer is to be informed that the pending nonapproval status is to be treated the same as a nonapproval and that the buyer has 21 days to appeal.

As shown in Table 1, during the period July 1, 2010, through March 31, 2013, the Department processed 1,972,244 criminal history record check requests from dealers.

Table 1
Criminal History Record Check Request Status by State Fiscal Year

	Approvals	Conditional Approvals	Conditional Nonapprovals	Nonapprovals	Pending Nonapprovals	Totals
2010-11						
1 st Quarter	116,729	526	180	1,556	169	119,160
2 nd Quarter	151,589	633	387	2,014	183	154,806
3 rd Quarter	158,407	538	552	2,371	216	162,084
4 th Quarter	127,635	509	367	1,753	164	130,428
2011-12						
1st Quarter	132,787	509	273	1,827	158	135,554
2nd Quarter	175,123	589	420	2,286	215	178,633
3rd Quarter	184,989	631	536	2,812	287	189,255
4th Quarter	157,593	580	170	2,035	228	160,606
2012-13						
1st Quarter	167,424	576	131	1,974	220	170,325
2nd Quarter	272,681	825	370	3,265	328	277,469
3rd Quarter	288,358	838	657	3,722	349	293,924
Totals	<u>1,933,315</u>	<u>6,754</u>	<u>4,043</u>	<u>25,615</u>	<u>2,517</u>	<u>1,972,244</u>

Source: Department records.

When submitting to a criminal history records check, pursuant to Department Rule,⁵ potential buyers were to pay a \$5 fee. The Department collected fees totaling \$2,828,295 during the 2010-11 fiscal year, \$3,296,390 during the 2011-12 fiscal year, and \$3,712,590 for the nine-month period July 1, 2012, through March 31, 2013.

Pursuant to State law,⁶ any person denied the right to receive or purchase a firearm may request a criminal history records review (appeal) and correction. As shown in Table 2, 9,253 appeals were made during the period July 1, 2010, through February 28, 2013.

⁵ Department of Law Enforcement Rule 11C-6.009, Florida Administrative Code.

⁶ Section 790.065(6), Florida Statutes.

**Table 2
Firearm Purchase Program Appeals
For the Period July 1, 2010, through February 28, 2013**

Final Appeal Decision	Number
Approval	4,461
Conditional Approval	74
Nonapproval	3,845
Pending Nonapproval	152
Rejected	721
Total	<u>9,253</u>

Source: Department records.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Mentally Defective Database

State law⁷ requires that upon receipt of a request for a criminal history records check, the Department shall review the records available to it to determine if the potential buyer is eligible under State and Federal law to receive or purchase a firearm. As indicated in Florida law, one of the findings which may disqualify a potential buyer is a finding that he or she has been adjudicated mentally defective⁸ or has been committed to a mental institution by a court. In order to facilitate this check, the Department, pursuant to Florida law, was responsible for compiling and maintaining the MECOM Database showing persons who were prohibited from purchasing a firearm based on court records showing an adjudication of mental defectiveness or a court-ordered commitment to a mental institution.⁹

The MECOM Database was established in February 2007 when Florida law was amended to require, effective February 1, 2007, State Clerks of Court (Clerks) to submit to the Department, within one month after the rendition, court records showing an adjudication of mental defectiveness and or a court-ordered commitment to a mental institution.¹⁰ The court records were to be submitted in an automated format and include, at a minimum, the name, along with any known alias or former name, the sex (gender), and the date of birth of the person.¹¹

On June 5, 2012, the Department received as part of a National Instant Criminal Background Check System Act Record Improvement Program (NARIP) grant, funding to research and assist Clerks in their efforts to bring mental defectiveness adjudication and mental institution commitment records (historical project) from January 1, 2002, through January 31, 2007, into the MECOM Database. In response to our audit inquiry, Department management indicated that in connection with the grant, each Clerk was contacted at the start of the historical project and asked to update the MECOM database and that the Department had conducted presentations for the Clerks regarding statutory record submission requirements and how to submit the necessary records to the MECOM database.

According to Department records, during the period July 2011 through April 2013, 69,902 records were added to the MECOM Database. Of the 69,902 records, 43,447 records related to mental defectiveness adjudications and

⁷ Section 790.065(2)(a)4., Florida Statutes.

⁸ Adjudicated mentally defective is defined by Section 790.065(2)(a)4.a., Florida Statutes, as 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.

⁹ Section 790.065(2)(a)4.c., Florida Statutes.

¹⁰ Chapter 2006-176, Laws of Florida.

¹¹ Section 790.065(2)(a)4.c., Florida Statutes.

court-ordered mental institution commitments made prior to February 1, 2007, and 26,455 records related to adjudications and commitments made subsequent to February 1, 2007.

As part of our audit, we evaluated the reasonableness of the MECOM Database information. Our audit tests disclosed that the data was often not timely recorded and, in some instances, may not have been accurately and completely recorded. Our tests of reasonableness also indicated that some mental defectiveness adjudications and court-ordered mental institution commitments may not yet have been recorded. Specifically:

- Of the 26,455 records entered into the MECOM Database for adjudications or commitments made subsequent to February 1, 2007, 11,307 of the records were entered into the MECOM Database more than one month subsequent to the adjudication or commitment. As shown by Table 3, a total of 3,711 of these records were entered into the MECOM Database on dates more than three years after the date of adjudication or commitment (See Table 3).

Table 3
Timeliness of MECOM Database Record Entry
For Adjudications or Commitments from February 2007 through April 2013
Entered Between July 2011 through April 2013

Number of Days Late	Number of Records
1 to 30	5,487
31 to 60	655
61 to 90	171
91 to 180	290
181 to 365	333
One Year to Two Years	335
Two Years to Three Years	325
Three Years or More	3,711
Total	<u>11,307</u>

Source: Department records.

- Based on our analysis of MECOM Database information, for records added between July 2011, and April 2013, relative to cases disposed subsequent to February 1, 2007, no mental defectiveness adjudication or court-ordered mental institution commitment records had been created for ten counties. While there were records for the historical project time period added to the MECOM Database for eight of these ten counties, two counties had no mental defectiveness adjudication or court-ordered mental institution commitment records entered during the period July 2011, and April 2013.
- Existing Database records were not always accurate and complete with respect to the required data. For example:
 - For 194 of the 69,902 records, the individual’s recorded date of birth was the same as the date of the court order, indicating that either the date of birth or the date of order was incorrect.¹² Additionally, the date of birth for 40 of the 194 individuals was between January 10, 2006, and March 15, 2013, indicating that the date of birth may be incorrect as the age of these individuals would be calculated at less than eight years old. The MECOM Database did not have an edit to identify records with the same date of birth and date of order. In response to our audit inquiry, Department management indicated that a programming request to add the edit had been prepared.
 - For 17,203 of the 69,902 records, the gender was recorded as unknown, a classification utilized when the gender of the individual cited in the court order was not identified as either male or female. In response to our audit inquiry, Department management stated that there was no Statewide standard for completing court orders and, as a result, gender may not always be properly indicated on court orders.

¹² The date of order is the date of the court order.

Our review of MECOM Database records disclosed that the Department had not yet established procedures for ensuring the timeliness, accuracy, and completeness of the MECOM database records. In response to our audit inquiry, Department management indicated that they had submitted an application to the United States Department of Justice for funding under the 2013-14 fiscal year NARIP, in part, to establish a consistent method of tracking ongoing MECOM Database submissions and historical entries by Clerks.

Absent timely, accurate, and complete MECOM Database information, there is an increased risk that prospective firearms buyers, who have been adjudicated mentally defective or who have been committed to a mental institution by a court, may not be subject to timely and accurate identification.

Recommendation: We recommend that the Department continue its efforts to work with the Clerks to ensure that records are timely, accurately, and completely entered into the MECOM Database as required by State law.

PRIOR AUDIT FOLLOW-UP

The Department had taken corrective actions for the findings included in our report No. 2011-094.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from February 2013 through July 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on the Firearm Purchase Program (Program) and selected administrative matters. The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in our report No. 2011-094.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability

and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit we:

- Obtained an understanding of information technology (IT) controls related to the Firearm Eligibility System and the MECOM Database, assessed the risks of those controls, evaluated whether selected general and application IT controls were in place, and tested the effectiveness of the controls.
- Determined whether the Department had established controls to reasonably ensure that firearm purchase requests were approved or disapproved in accordance with applicable laws, rules, and other guidelines.
- Examined documentation for 60 of 2,409 firearm dealers to determine whether the dealers were licensed by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, prior to registration with the Department.
- Examined documentation for 100 criminal history record check requests made during the month of May 2013 to determine compliance with the requirements of Section 790.065, Florida Statutes. Due to the nature of the Program, we could only test approvals from live transactions as all identifying information for approved requests, pursuant to Section 790.065, Florida Statutes, are deleted within 48 hours of approval.
- Analyzed Department records of firearm purchase approvals during the period July 1, 2010, through May 12, 2013, to determine whether, contrary to the requirements of Section 790.065, Florida Statutes, the records included any purchaser identifying information.
- Analyzed 69,902 MECOM Database records to determine compliance with the requirements of Section 790.065, Florida Statutes.
- Examined documentation for 20 criminal history record check appeals made during the period July 1, 2011, through February 28, 2013, to determine compliance with the requirements of Section 790.065, Florida Statutes.
- Examined documentation for 30 Firearm Purchase Program expenditures incurred during the period July 1, 2011, through February 28, 2013, and totaling \$257,405, out of a total of \$3,464,395, to determine whether the expenditures were recorded in the correct amounts, adequately documented, properly authorized and approved, and made in accordance with applicable laws and rules.
- Examined 30 criminal history record check fee invoices received during the period July 1, 2011, through February 28, 2013, and totaling \$106,080, to assess the accuracy of revenue recording and compliance with the requirements of Section 790.065, Florida Statutes, and Department of Law Enforcement Rule 11C-6.009, Florida Administrative Code.

- Analyzed Department reports on the number of licensed dealer criminal history record check requests made via the Department’s toll-free telephone number and those entered directly into the Firearm Eligibility System, reviewed Department monitoring documentation, and interviewed Department personnel to determine whether the Department monitored Program efficiency and effectiveness.
- Examined documentation for 30 Criminal Justice Standards and Training Trust Fund (Trust Fund) expenditures incurred during the period July 1, 2011, through February 28, 2013, and totaling \$1,649,992, out of a total of \$20,964,976, to determine whether the expenditures were recorded in the correct amounts, adequately documented, properly authorized and approved, and made in accordance with applicable laws and rules.
- Analyzed Trust Fund revenues and expenditures for the period July 1, 2011, through February 28, 2013, to identify any significant and unusual amounts that may have required further investigation or testing.
- Examined 10 of 47 Criminal Justice Professionalism audits issued during the period July 1, 2011, through February 28, 2013, to assess compliance with the requirements of Department of Law Enforcement Rule 11B-18.010, Florida Administrative Code.
- Examined the seven Trust Fund status reports filed during the period August 1, 2011, through January 31, 2013, for compliance with the requirements of Section 943.25(2), Florida Statutes.
- Examined 25 subgrants closed during the period July 1, 2011, through February 28, 2013, to determine whether the Department correctly accounted for and timely closed out the subgrants.
- Examined 20 subgrants that were in open status as of March 31, 2013, to determine whether the subgrants were appropriately classified as open.
- Examined records for 10 of 68 motor vehicles acquired during the period July 1, 2011, through February 28, 2013, to determine whether the acquisitions were appropriately approved and made in accordance with the requirements of Section 287.15, Florida Statutes.
- Observed, documented, and evaluated the effectiveness of selected processes and procedures for the management of revenues and cash receipts, the State purchasing card program, and travel expenditures.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT’S RESPONSE

In a response letter dated November 12, 2013, the Executive Director of the Florida Department of Law Enforcement provided responses to our audit findings and recommendations. The Executive Director’s response is included as **EXHIBIT A**.

EXHIBIT A
MANAGEMENT'S RESPONSE



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

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November 12, 2013

Mr. David Martin, CPA
Auditor General
Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

The enclosed response is provided for the preliminary and tentative findings report on the operational audit of the Florida Department of Law Enforcement, Firearm Purchase Program.

Finding No. 1: Mentally Defective Database

Recommendation: We recommend that the Department continue its efforts to work with the Clerks to ensure that records are timely, accurately, and completely entered into the MECOM Database as required by State law.

Response: Agree. The department will continue working with the clerks to ensure records entered into the Mentally Defective Database (MECOM Database) are timely, accurate and complete and with our statewide partners to encourage required demographic information is consistently reported to the courts for inclusion in the court order. The reporting standards established for the MECOM Database are consistent with standards set by the Federal Bureau of Investigation.

If you require further information, please contact Inspector General Al Dennis at 410-7230.

Sincerely,

Gerald M. Bailey
for Gerald M. Bailey
Commissioner

GMB/lht

