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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(18)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: February 5, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution urging Florida lawmakers to require the appropriate state agency to update a national background check database with Florida adjudications of mental defectiveness or commitments to mental institutions and to ensure utilization of the national database in screening Florida applicants for concealed weapon and firearm licenses for disqualifying records from other jurisdictions
Resolution No. R-112-13

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

MEMORANDUM
(Revised)

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and Members, Board of County Commissioners

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Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

__✓__ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(18)
2-5-13

RESOLUTION NO. R-112-13

RESOLUTION URGING FLORIDA LAWMAKERS TO REQUIRE THE APPROPRIATE STATE AGENCY TO UPDATE A NATIONAL BACKGROUND CHECK DATABASE WITH FLORIDA ADJUDICATIONS OF MENTAL DEFECTIVENESS OR COMMITMENTS TO MENTAL INSTITUTIONS AND TO ENSURE UTILIZATION OF THE NATIONAL DATABASE IN SCREENING FLORIDA APPLICANTS FOR CONCEALED WEAPON AND FIREARM LICENSES FOR DISQUALIFYING RECORDS FROM OTHER JURISDICTIONS

WHEREAS, pursuant to Section 790.01, Florida Statutes, a person who carries a concealed weapon or firearm on or about his or her person commits a punishable crime, unless licensed to do so pursuant to Section 790.06, Florida Statutes; and

WHEREAS, the Florida Department of Agriculture and Consumer Services, which falls under the direct purview of the Commissioner of Agriculture and Consumer Services, a separate Cabinet officer from the Governor, is the state agency responsible for issuing licenses to carry concealed weapons or firearms pursuant to Section 790.06, Florida Statutes; and

WHEREAS, requirements for issuance of such a license pursuant to Section 790.06(2), Florida Statutes, include not having been adjudicated incapacitated and not having been committed to a mental institution, unless certain exceptions are met, under Florida law or similar laws of any other state; and

WHEREAS, pursuant to 790.06(6), Florida Statutes, the Department of Agriculture and Consumer Services shall deny a license application if the applicant fails to meet the aforementioned criteria; and

WHEREAS, pursuant to Section 790.06(6), Florida Statutes, the Department of Agriculture and Consumer Services must forward information provided by the applicant to the Florida Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for criminal justice information; and

WHEREAS, pursuant to Section 790.065(1), Florida Statutes, a licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver a firearm to another person until she or he has met various conditions, including requesting the Department of Law Enforcement to conduct a check of the potential buyer's information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems; and

WHEREAS, Section 790.065(2), Florida Statutes, requires the Department of Law Enforcement to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions; and

WHEREAS, Section 790.065(2), Florida Statutes, requires clerks of court to submit such records to the Department of Law Enforcement within one month after the rendition of the adjudication or commitment; and

WHEREAS, Section 790.065(2), Florida Statutes, requires the Department of Law Enforcement, upon receipt of a request for a criminal history record check, to review any records available to determine if the potential buyer has been adjudicated mentally defective or has been committed to a mental institution by a court and as a result is prohibited by federal law from purchasing a firearm; and

WHEREAS, pursuant to Section 790.065(2), Florida Statutes, the Florida Department of Law Enforcement is authorized to disclose collected data to other state and federal agencies for use exclusively in determining the lawfulness of a firearm sale or transfer and to the Florida Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license; and

WHEREAS, the Sun Sentinel reported that because it is not a law enforcement agency, the Florida Department of Agriculture and Consumer Services cannot obtain information from the Federal Bureau of Investigation's ("FBI") National Instant Criminal Background Check System ("NICS"), although the database is accessible by the Florida Department of Law Enforcement; and

WHEREAS, 28 C.F.R. 25.8, a federal regulation, states access to data stored in NICS is limited to duly authorized agencies,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1: Urges the Florida Legislature to enact comprehensive legislation to require the Florida Department of Law Enforcement or another appropriate state agency to (1) update the national NICS database with Florida court records of adjudications of mental defectiveness or commitments to mental institutions, and (2) utilize the national NICS database in screening applicants for Florida licenses to carry concealed weapons or firearms to ensure such licenses are not issued to applicants with disqualifying records from other jurisdictions.

Section 2: Urges Florida's Governor, the Commissioner of Agriculture and Consumer Services and applicable state agencies to collaborate to ensure utilization of the national NICS database in screening applicants for Florida licenses to carry concealed weapons or firearms.

Section 3: Directs the Clerk of this Board to send a certified copy of this resolution to the Governor, Commissioner of Agriculture and Consumer Services, Senate President, House Speaker and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 4: Directs the County's state lobbyists to advocate for the passage of the legislation and action set forth in Sections 1 and 2 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2013 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. It was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman			**aye**
Lynda Bell, Vice Chair			**aye**
Bruno A. Barreiro	**aye**	Esteban L. Bovo, Jr.	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of February, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Estephanie Resnik