

1 A bill to be entitled

2 An act relating to the purchase of firearms by
3 mentally ill persons; amending s. 790.065, F.S.;
4 providing conditions under which a person who has been
5 voluntarily admitted to a mental institution for
6 treatment and has undergone an involuntary examination
7 under the Baker Act may be prohibited from purchasing
8 a firearm; providing requirements for the examining
9 physician; providing for judicial review of certain
10 findings; providing specified notice requirements;
11 providing form and contents of notice; providing
12 requirements with respect to the filing of specified
13 records with the court and presentation of such
14 records to a judge or magistrate; providing lawful
15 authority of a judge or magistrate to review specified
16 records and submit such records to the Department of
17 Law Enforcement; providing a timeframe for submission
18 of records to the department upon approval of a record
19 by a judge or magistrate; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Paragraph (a) of subsection (2) of section
24 790.065, Florida Statutes, is amended to read:

25 790.065 Sale and delivery of firearms.—

26 (2) Upon receipt of a request for a criminal history
27 record check, the Department of Law Enforcement shall, during
28 the licensee's call or by return call, forthwith:

29 (a) Review any records available to determine if the
30 potential buyer or transferee:

31 1. Has been convicted of a felony and is prohibited from
32 receipt or possession of a firearm pursuant to s. 790.23;

33 2. Has been convicted of a misdemeanor crime of domestic
34 violence, and therefore is prohibited from purchasing a firearm;

35 3. Has had adjudication of guilt withheld or imposition of
36 sentence suspended on any felony or misdemeanor crime of
37 domestic violence unless 3 years have elapsed since probation or
38 any other conditions set by the court have been fulfilled or
39 expunction has occurred; or

40 4. Has been adjudicated mentally defective or has been
41 committed to a mental institution by a court and as a result is
42 prohibited by federal law from purchasing a firearm.

43 a. As used in this subparagraph, "adjudicated mentally
44 defective" means a determination by a court that a person, as a
45 result of marked subnormal intelligence, or mental illness,
46 incompetency, condition, or disease, is a danger to himself or
47 herself or to others or lacks the mental capacity to contract or
48 manage his or her own affairs. The phrase includes a judicial
49 finding of incapacity under s. 744.331(6)(a), an acquittal by
50 reason of insanity of a person charged with a criminal offense,
51 and a judicial finding that a criminal defendant is not
52 competent to stand trial.

53 b. As used in this subparagraph, "committed to a mental
54 institution" means:

55 (I) Involuntary commitment, commitment for mental
56 defectiveness or mental illness, and commitment for substance

57 | abuse. The phrase includes involuntary inpatient placement as
 58 | defined in s. 394.467, involuntary outpatient placement as
 59 | defined in s. 394.4655, involuntary assessment and stabilization
 60 | under s. 397.6818, and involuntary substance abuse treatment
 61 | under s. 397.6957, but does not include a person in a mental
 62 | institution for observation or discharged from a mental
 63 | institution based upon the initial review by the physician or a
 64 | voluntary admission to a mental institution; ~~or-~~

65 | (II) Notwithstanding sub-sub-subparagraph (I), voluntary
 66 | admission to a mental institution for outpatient or inpatient
 67 | treatment of a person who had an involuntary examination under
 68 | s. 394.463, where each of the following conditions have been
 69 | met:

70 | (A) The examining physician found that the person is an
 71 | imminent danger to himself or herself or others.

72 | (B) The examining physician certified that if the person
 73 | did not agree to voluntary treatment, a petition for involuntary
 74 | outpatient or inpatient treatment would have been filed under s.
 75 | 394.463(2)(i)4.

76 | (C) Before agreeing to voluntary treatment, the person
 77 | received written notice of that finding and certification, and
 78 | written notice that as a result of such finding, he or she may
 79 | be prohibited from purchasing a firearm, and may not be eligible
 80 | to apply for or retain a concealed weapon or firearms license
 81 | under s. 790.06 and the person acknowledged such notice in
 82 | writing, in substantially the following form:

83 |
 84 | "I understand that the doctor who examined me believes

85 | I am a danger to myself or to others. I understand
86 | that if I do not agree to voluntary treatment, the
87 | doctor will file a petition in court to require me to
88 | receive involuntary treatment. I understand that if
89 | that petition is filed, I have the right to contest
90 | it. I understand that by agreeing to voluntary
91 | treatment in this situation, I may be prohibited from
92 | buying firearms and from applying for or retaining a
93 | concealed weapons or firearms license until I apply
94 | for and receive relief from that restriction under
95 | Florida law."

96 |
97 | (D) A judge or a magistrate has, pursuant to sub-sub-
98 | subparagraph c.(II), reviewed the record of the finding,
99 | certification, notice, and written acknowledgement classifying
100 | the person as an imminent danger to himself or herself or
101 | others, and approved such record for submittal to the
102 | department.

103 | c. In order to check for these conditions, the department
104 | shall compile and maintain an automated database of persons who
105 | are prohibited from purchasing a firearm based on court records
106 | of adjudications of mental defectiveness or commitments to
107 | mental institutions.

108 | (I) Except as provided in sub-sub-subparagraph (II),
109 | clerks of court shall submit these records to the department
110 | within 1 month after the rendition of the adjudication or
111 | commitment. Reports shall be submitted in an automated format.
112 | The reports must, at a minimum, include the name, along with any

113 known alias or former name, the sex, and the date of birth of
114 the subject.

115 (II) For persons committed to a mental institution
116 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
117 the person's agreement to voluntary admission, a record of the
118 finding, certification, notice, and written acknowledgement must
119 be filed with the clerk of the court for the county in which the
120 involuntary examination under s. 394.463 occurred. The clerk
121 must present the records to a judge or magistrate within 24
122 hours after receipt of the records. A judge or magistrate is
123 required and has the lawful authority to review the records and,
124 if the judge or magistrate determines that the record supports
125 the classifying of the person as an imminent danger to himself
126 or herself or others, to approve the record for submittal to the
127 department. If a judge or magistrate approves the submittal of
128 the record to the department, the record must be submitted to
129 the department within 24 hours.

130 d. A person who has been adjudicated mentally defective or
131 committed to a mental institution, as those terms are defined in
132 this paragraph, may petition the circuit court that made the
133 adjudication or commitment, or the court that approved the
134 record for submittal to the department pursuant to sub-sub-
135 subparagraph c.(II), for relief from the firearm disabilities
136 imposed by such adjudication or commitment. A copy of the
137 petition shall be served on the state attorney for the county in
138 which the person was adjudicated or committed. The state
139 attorney may object to and present evidence relevant to the
140 relief sought by the petition. The hearing on the petition may

141 | be open or closed as the petitioner may choose. The petitioner
142 | may present evidence and subpoena witnesses to appear at the
143 | hearing on the petition. The petitioner may confront and cross-
144 | examine witnesses called by the state attorney. A record of the
145 | hearing shall be made by a certified court reporter or by court-
146 | approved electronic means. The court shall make written findings
147 | of fact and conclusions of law on the issues before it and issue
148 | a final order. The court shall grant the relief requested in the
149 | petition if the court finds, based on the evidence presented
150 | with respect to the petitioner's reputation, the petitioner's
151 | mental health record and, if applicable, criminal history
152 | record, the circumstances surrounding the firearm disability,
153 | and any other evidence in the record, that the petitioner will
154 | not be likely to act in a manner that is dangerous to public
155 | safety and that granting the relief would not be contrary to the
156 | public interest. If the final order denies relief, the
157 | petitioner may not petition again for relief from firearm
158 | disabilities until 1 year after the date of the final order. The
159 | petitioner may seek judicial review of a final order denying
160 | relief in the district court of appeal having jurisdiction over
161 | the court that issued the order. The review shall be conducted
162 | de novo. Relief from a firearm disability granted under this
163 | sub-subparagraph has no effect on the loss of civil rights,
164 | including firearm rights, for any reason other than the
165 | particular adjudication of mental defectiveness or commitment to
166 | a mental institution from which relief is granted.

167 | e. Upon receipt of proper notice of relief from firearm
168 | disabilities granted under sub-subparagraph d., the department

169 shall delete any mental health record of the person granted
170 relief from the automated database of persons who are prohibited
171 from purchasing a firearm based on court records of
172 adjudications of mental defectiveness or commitments to mental
173 institutions.

174 f. The department is authorized to disclose data ~~the~~
175 collected pursuant to this subparagraph ~~data~~ to agencies of the
176 Federal Government and other states for use exclusively in
177 determining the lawfulness of a firearm sale or transfer. The
178 department is also authorized to disclose this ~~any collected~~
179 data to the Department of Agriculture and Consumer Services for
180 purposes of determining eligibility for issuance of a concealed
181 weapons or concealed firearms license and for determining
182 whether a basis exists for revoking or suspending a previously
183 issued license pursuant to s. 790.06(10). When a potential buyer
184 or transferee appeals a nonapproval based on these records, the
185 clerks of court and mental institutions shall, upon request by
186 the department, provide information to help determine whether
187 the potential buyer or transferee is the same person as the
188 subject of the record. Photographs and any other data that could
189 confirm or negate identity must be made available to the
190 department for such purposes, notwithstanding any other
191 provision of state law to the contrary. Any such information
192 that is made confidential or exempt from disclosure by law shall
193 retain such confidential or exempt status when transferred to
194 the department.

195 Section 2. This act shall take effect July 1, 2013.