

By the Committees on Judiciary; Criminal Justice; and Senator  
Lynn

590-06960-08

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1 A bill to be entitled

2 An act relating to the revocation or suspension of  
3 concealed weapon and firearm licenses held by licensees  
4 who are adjudicated incapacitated or committed to a mental  
5 institution; amending s. 790.065, F.S.; revising the  
6 definition of the phrase "committed to a mental  
7 institution"; authorizing the Department of Law  
8 Enforcement to provide data collected from court records  
9 to the Department of Agriculture and Consumer Services for  
10 purposes of determining whether a license should be  
11 revoked or suspended under s. 790.06(10), F.S.; providing  
12 an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Paragraph (a) of subsection (2) of section  
17 790.065, Florida Statutes, is amended to read:

18 790.065 Sale and delivery of firearms.--

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

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

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

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

28 3. Has had adjudication of guilt withheld or imposition of  
29 sentence suspended on any felony or misdemeanor crime of domestic

590-06960-08

20081616c1

30 | violence unless 3 years have elapsed since probation or any other  
31 | conditions set by the court have been fulfilled or expunction has  
32 | occurred; or

33 |       4. Has been adjudicated mentally defective or has been  
34 | committed to a mental institution by a court and as a result is  
35 | prohibited by federal law from purchasing a firearm.

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

46 |       b. As used in this subparagraph, "committed to a mental  
47 | institution" means involuntary commitment, commitment for mental  
48 | defectiveness or mental illness, and commitment for substance  
49 | abuse. The phrase includes ~~shall include~~ involuntary inpatient  
50 | placement as defined in s. 394.467, involuntary outpatient  
51 | placement as defined in s. 394.4655, involuntary assessment and  
52 | stabilization under s. 397.6818, and involuntary substance abuse  
53 | treatment under s. 397.6957, but does ~~shall~~ not include a person  
54 | in a mental institution for observation or discharged from a  
55 | mental institution based upon the initial review by the physician  
56 | or a voluntary admission to a mental institution.

57 |       c. In order to check for these conditions, the department  
58 | shall compile and maintain an automated database of persons who

590-06960-08

20081616c1

59 are prohibited from purchasing a firearm based on court records  
60 of adjudications of mental defectiveness or commitments to mental  
61 institutions. Clerks of court shall ~~are required to~~ submit these  
62 records to the department within 1 month after the rendition of  
63 the adjudication or commitment. Reports may be submitted in an  
64 automated format. The reports must, at a minimum, include the  
65 name, along with any known alias or former name, the sex, and the  
66 date of birth of the subject. The department shall delete any  
67 mental health record from the database upon request of an  
68 individual when 5 years have elapsed since the individual's  
69 restoration to capacity by court order after being adjudicated an  
70 incapacitated person under s. 744.331, or similar laws of any  
71 other state; or, in the case of an individual who was previously  
72 committed to a mental institution under chapter 394, or similar  
73 laws of any other state, when the individual produces a  
74 certificate from a licensed psychiatrist that he or she has not  
75 suffered from disability for at least 5 years prior to the date  
76 of request for removal of the record. When ~~Where~~ the department  
77 has received a subsequent record of an adjudication of mental  
78 defectiveness or commitment to a mental institution for such  
79 individual, the 5-year timeframe shall be calculated from the  
80 most recent adjudication of incapacitation or commitment.

81 d. The department is authorized to disclose the collected  
82 data to agencies of the Federal Government and other states for  
83 use exclusively in determining the lawfulness of a firearm sale  
84 or transfer. The department is also authorized to disclose any  
85 ~~applicable~~ collected data to the Department of Agriculture and  
86 Consumer Services for purposes of determining ~~determination of~~  
87 eligibility for issuance of a concealed weapons or concealed

590-06960-08

20081616c1

88 | firearms license and for determining whether a basis exists for  
89 | revoking or suspending a previously issued license pursuant to s.  
90 | 790.06(10) upon receipt of an applicant fingerprint submission  
91 | ~~forwarded pursuant to s. 790.06(6)(a).~~ When a potential buyer or  
92 | transferee appeals a nonapproval based on these records, the  
93 | clerks of court and mental institutions shall, upon request by  
94 | the department, provide information to help determine whether the  
95 | potential buyer or transferee is the same person as the subject  
96 | of the record. Photographs and any other data that could confirm  
97 | or negate identity must be made available to the department for  
98 | such purposes, notwithstanding any other provision of state law  
99 | to the contrary. Any such information that is made confidential  
100 | or exempt from disclosure by law shall retain such confidential  
101 | or exempt status when transferred to the department.

102 |       Section 2. This act shall take effect July 1, 2008.