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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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The Committee on Criminal Justice (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

790.065 Sale and delivery of firearms.—

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

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



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

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

17 3. Has had adjudication of guilt withheld or imposition of
18 sentence suspended on any felony or misdemeanor crime of
19 domestic violence unless 3 years have elapsed since probation or
20 any other conditions set by the court have been fulfilled or
21 expunction has occurred; or

22 4. Has been adjudicated mentally defective or has been
23 committed to a mental institution by a court or as provided in
24 sub-sub-subparagraph b. (II), and as a result is prohibited by
25 state or federal law from purchasing a firearm.

26 a. As used in this subparagraph, "adjudicated mentally
27 defective" means a determination by a court that a person, as a
28 result of marked subnormal intelligence, or mental illness,
29 incompetency, condition, or disease, is a danger to himself or
30 herself or to others or lacks the mental capacity to contract or
31 manage his or her own affairs. The phrase includes a judicial
32 finding of incapacity under s. 744.331(6)(a), an acquittal by
33 reason of insanity of a person charged with a criminal offense,
34 and a judicial finding that a criminal defendant is not
35 competent to stand trial.

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

38 (I) Involuntary commitment, commitment for mental
39 defectiveness or mental illness, and commitment for substance
40 abuse. The phrase includes involuntary inpatient placement as
41 defined in s. 394.467, involuntary outpatient placement as



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42 defined in s. 394.4655, involuntary assessment and stabilization
43 under s. 397.6818, and involuntary substance abuse treatment
44 under s. 397.6957, but does not include a person in a mental
45 institution for observation or discharged from a mental
46 institution based upon the initial review by the physician or a
47 voluntary admission to a mental institution; or-

48 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
49 admission to a mental institution for outpatient or inpatient
50 treatment of a person who had an involuntary examination under
51 s. 394.463, where each of the following conditions have been
52 met:

53 (A) An examining physician found that the person is an
54 imminent danger to himself or herself or others.

55 (B) The examining physician certified that if the person
56 did not agree to voluntary treatment, a petition for involuntary
57 outpatient or inpatient treatment would have been filed under s.
58 394.463(2)(i)4., or the examining physician certified that a
59 petition was filed and the person subsequently agreed to
60 voluntary treatment prior to a court hearing on the petition.

61 (C) Before agreeing to voluntary treatment, the person
62 received written notice of that finding and certification, and
63 written notice that as a result of such finding, he or she may
64 be prohibited from purchasing a firearm, and may not be eligible
65 to apply for or retain a concealed weapon or firearms license
66 under s. 790.06 and the person acknowledged such notice in
67 writing, in substantially the following form:

68
69 "I understand that the doctor who examined me believes I am a
70 danger to myself or to others. I understand that if I do not



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71 agree to voluntary treatment, a petition will be filed in court
72 to require me to receive involuntary treatment. I understand
73 that if that petition is filed, I have the right to contest it.
74 In the event a petition has been filed, I understand that I can
75 subsequently agree to voluntary treatment prior to a court
76 hearing. I understand that by agreeing to voluntary treatment in
77 either of these situations, I may be prohibited from buying
78 firearms and from applying for or retaining a concealed weapons
79 or firearms license until I apply for and receive relief from
80 that restriction under Florida law."

81 (D) A judge or a magistrate has, pursuant to sub-sub-
82 subparagraph c.(II), reviewed the record of the finding,
83 certification, notice, and written acknowledgement classifying
84 the person as an imminent danger to himself or herself or
85 others, and ordered that such record be submitted to the
86 department.

87 c. In order to check for these conditions, the department
88 shall compile and maintain an automated database of persons who
89 are prohibited from purchasing a firearm based on court records
90 of adjudications of mental defectiveness or commitments to
91 mental institutions.

92 (I) Except as provided in sub-sub-subparagraph (II), clerks
93 of court shall submit these records to the department within 1
94 month after the rendition of the adjudication or commitment.
95 Reports shall be submitted in an automated format. The reports
96 must, at a minimum, include the name, along with any known alias
97 or former name, the sex, and the date of birth of the subject.

98 (II) For persons committed to a mental institution pursuant
99 to sub-sub-subparagraph b.(II), within 24 hours after the



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100 person's agreement to voluntary admission, a record of the
101 finding, certification, notice, and written acknowledgement must
102 be filed by the administrator of the receiving or treatment
103 facility, as defined in s. 394.455, with the clerk of the court
104 for the county in which the involuntary examination under s.
105 394.463 occurred. No fee shall be charged for the filing under
106 this sub-sub-subparagraph. The clerk must present the records to
107 a judge or magistrate within 24 hours after receipt of the
108 records. A judge or magistrate is required and has the lawful
109 authority to review the records ex parte and, if the judge or
110 magistrate determines that the record supports the classifying
111 of the person as an imminent danger to himself or herself or
112 others, to order that the record be submitted to the department.
113 If a judge or magistrate orders the submittal of the record to
114 the department, the record must be submitted to the department
115 within 24 hours.

116 d. A person who has been adjudicated mentally defective or
117 committed to a mental institution, as those terms are defined in
118 this paragraph, may petition the circuit court that made the
119 adjudication or commitment, or the court that ordered that the
120 record be submitted to the department pursuant to sub-sub-
121 subparagraph c.(II), for relief from the firearm disabilities
122 imposed by such adjudication or commitment. A copy of the
123 petition shall be served on the state attorney for the county in
124 which the person was adjudicated or committed. The state
125 attorney may object to and present evidence relevant to the
126 relief sought by the petition. The hearing on the petition may
127 be open or closed as the petitioner may choose. The petitioner
128 may present evidence and subpoena witnesses to appear at the



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

153 e. Upon receipt of proper notice of relief from firearm
154 disabilities granted under sub-subparagraph d., the department
155 shall delete any mental health record of the person granted
156 relief from the automated database of persons who are prohibited
157 from purchasing a firearm based on court records of



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158 adjudications of mental defectiveness or commitments to mental
159 institutions.

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

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

182
183 ===== T I T L E A M E N D M E N T =====

184 And the title is amended as follows:

185 Delete everything before the enacting clause
186 and insert:



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187 A bill to be entitled
188 An act relating to the purchase of firearms by
189 mentally ill persons; amending s. 790.065, F.S.;
190 providing conditions under which a person who has been
191 voluntarily admitted to a mental institution for
192 treatment and has undergone an involuntary examination
193 under the Baker Act may be prohibited from purchasing
194 a firearm; providing requirements for the examining
195 physician; providing for judicial review of certain
196 findings; providing specified notice requirements;
197 providing form and contents of notice; providing
198 requirements with respect to the filing of specified
199 records with the court and presentation of such
200 records to a judge or magistrate; providing lawful
201 authority of a judge or magistrate to review specified
202 records and order such records be submitted to the
203 Department of Law Enforcement; providing a timeframe
204 for submission of records to the department upon order
205 by a judge or magistrate; providing an effective date.