

By Senator Gibson

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1 A bill to be entitled
2 An act relating to regulation of firearms; creating s.
3 790.339, F.S.; defining "preventative assessment";
4 providing that it is unlawful for a person to own or
5 have in his or her care, custody, possession, or
6 control any firearm or ammunition, or to carry a
7 concealed weapon or firearm, for a period of 90 days
8 if the person is the subject of a preventative
9 assessment received by the Department of Law
10 Enforcement; providing restrictions to be imposed by
11 the department upon receipt of a preventative
12 assessment; providing for removal of restrictions;
13 providing a penalty; reenacting and amending s.
14 790.065, F.S.; requiring the department to review
15 records to determine if a potential firearms purchaser
16 or transferee has received a preventative assessment;
17 defining "preventative assessment"; providing for the
18 inclusion of persons who are the subject of a
19 preventative assessment within the department's
20 automated database of persons who are prohibited from
21 purchasing a firearm; providing requirements for
22 reporting a preventative assessment and the contents
23 thereof; requiring the department to delete any mental
24 health record of a person subject to a preventative
25 assessment after a specified period of time; providing
26 an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 790.339, Florida Statutes, is created to
31 read:

32 790.339 Preventative assessment by psychiatrist or clinical
33 psychologist; possession of firearm, ammunition, or concealed
34 weapon or firearm unlawful for 90 days.-

35 (1) "Preventative assessment" means a conclusion reached by
36 a psychiatrist or clinical psychologist licensed under chapter
37 458 or chapter 459 who, upon treating or examining a patient,
38 makes a determination of the existence of mental illness or
39 mental defect of the patient which, in the judgment of the
40 psychiatrist or clinical psychologist, if combined with the
41 presence or possession of, or access to, a firearm by the
42 patient would pose an imminent danger or threat to the patient
43 or others.

44 (2) It is unlawful for any person to own or have in his or
45 her care, custody, possession, or control any firearm,
46 ammunition, or electric weapon or device, or to carry a
47 concealed weapon or firearm, including a tear gas gun or
48 chemical weapon or device, for a period of 90 days if that
49 person is the subject of a preventative assessment received by
50 the Department of Law Enforcement under s. 790.065(2).

51 (3) Upon receipt of a preventative assessment by the
52 Department of Law Enforcement, the following restrictions shall
53 be imposed by the department upon the subject of the
54 preventative assessment:

55 (a) A firearms license or license to carry a concealed
56 weapon or firearm issued to the subject of the preventative
57 assessment shall be suspended by the department or the
58 Department of Agriculture and Consumer Services, as applicable,

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59 for a period of 90 days.

60 (b) The subject of the preventative assessment is
61 ineligible to purchase a firearm for a period of 90 days.

62 (4) If, at the end of the 90-day period described in
63 subsection (3), the issuing psychiatrist or clinical
64 psychologist does not renew the preventative assessment for an
65 additional 90 days, the patient's firearms license, license to
66 carry a concealed weapon or firearm, and eligibility to purchase
67 and possess a firearm shall be restored.

68 (5) A person who violates this section commits a felony of
69 the second degree, punishable as provided in s. 775.082, s.
70 775.083, or s. 775.084.

71 Section 2. Subsection (2) of section 790.065, Florida
72 Statutes, is amended, and subsection (9) and paragraph (b) of
73 subsection (10) of that section are reenacted, to read:

74 790.065 Sale and delivery of firearms.—

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

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

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

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

84 3. Has had adjudication of guilt withheld or imposition of
85 sentence suspended on any felony or misdemeanor crime of
86 domestic violence unless 3 years have elapsed since probation or
87 any other conditions set by the court have been fulfilled or

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88 expunction has occurred; or

89 4. Has been adjudicated mentally defective or has been
90 committed to a mental institution by a court and as a result is
91 prohibited by federal law from purchasing a firearm or has
92 received a preventative assessment as defined in sub-
93 subparagraph c. and is prohibited from purchasing or possessing
94 a firearm, ammunition, or carrying a concealed weapon or firearm
95 for a period of 90 days pursuant to s. 790.339.

96 a. As used in this subparagraph, "adjudicated mentally
97 defective" means a determination by a court that a person, as a
98 result of marked subnormal intelligence, or mental illness,
99 incompetency, condition, or disease, is a danger to himself or
100 herself or to others or lacks the mental capacity to contract or
101 manage his or her own affairs. The phrase includes a judicial
102 finding of incapacity under s. 744.331(6)(a), an acquittal by
103 reason of insanity of a person charged with a criminal offense,
104 and a judicial finding that a criminal defendant is not
105 competent to stand trial.

106 b. As used in this subparagraph, "committed to a mental
107 institution" means involuntary commitment, commitment for mental
108 defectiveness or mental illness, and commitment for substance
109 abuse. The phrase includes involuntary inpatient placement as
110 defined in s. 394.467, involuntary outpatient placement as
111 defined in s. 394.4655, involuntary assessment and stabilization
112 under s. 397.6818, and involuntary substance abuse treatment
113 under s. 397.6957, but does not include a person in a mental
114 institution for observation or discharged from a mental
115 institution based upon the initial review by the physician or a
116 voluntary admission to a mental institution.

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117 c. As used in this subparagraph, a "preventative
118 assessment" means a conclusion reached by a psychiatrist or
119 clinical psychologist licensed under chapter 458 or chapter 459
120 who, upon treating or examining a patient, makes a determination
121 of the existence of mental illness or mental defect of the
122 patient which, in the judgment of the psychiatrist or clinical
123 psychologist, if combined with the presence or possession of, or
124 access to, a firearm by the patient would pose an imminent
125 danger or threat to the patient or others.

126 d.e. In order to check for these conditions, the department
127 shall compile and maintain an automated database of persons who
128 are prohibited from purchasing a firearm based on court records
129 of adjudications of mental defectiveness or commitments to
130 mental institutions, or based upon notification to the
131 department of a preventative assessment. Clerks of court shall
132 submit ~~these~~ records pursuant to sub-subparagraph a. or sub-
133 subparagraph b. to the department within 1 month after the
134 rendition of the adjudication or commitment. A psychiatrist or
135 clinical psychologist shall submit a report of a preventative
136 assessment to the department within 24 hours of his or her
137 diagnosis of the patient and subsequent determination that a
138 preventative assessment is warranted. Reports shall be submitted
139 in an automated format. The reports must, at a minimum, include
140 the name, along with any known alias or former name, the sex,
141 and the date of birth of the subject. The report of a
142 preventative assessment must include the name and license number
143 of the issuing psychiatrist or clinical psychologist. The report
144 of a preventative assessment may not include a diagnosis of the
145 patient.

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146 ~~e.d.~~ A person who has been adjudicated mentally defective
147 or committed to a mental institution, as those terms are defined
148 in this paragraph, may petition the circuit court that made the
149 adjudication or commitment for relief from the firearm
150 disabilities imposed by such adjudication or commitment. A copy
151 of the petition shall be served on the state attorney for the
152 county in which the person was adjudicated or committed. The
153 state attorney may object to and present evidence relevant to
154 the relief sought by the petition. The hearing on the petition
155 may be open or closed as the petitioner may choose. The
156 petitioner may present evidence and subpoena witnesses to appear
157 at the hearing on the petition. The petitioner may confront and
158 cross-examine witnesses called by the state attorney. A record
159 of the hearing shall be made by a certified court reporter or by
160 court-approved electronic means. The court shall make written
161 findings of fact and conclusions of law on the issues before it
162 and issue a final order. The court shall grant the relief
163 requested in the petition if the court finds, based on the
164 evidence presented with respect to the petitioner's reputation,
165 the petitioner's mental health record and, if applicable,
166 criminal history record, the circumstances surrounding the
167 firearm disability, and any other evidence in the record, that
168 the petitioner will not be likely to act in a manner that is
169 dangerous to public safety and that granting the relief would
170 not be contrary to the public interest. If the final order
171 denies relief, the petitioner may not petition again for relief
172 from firearm disabilities until 1 year after the date of the
173 final order. The petitioner may seek judicial review of a final
174 order denying relief in the district court of appeal having

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175 jurisdiction over the court that issued the order. The review
176 shall be conducted de novo. Relief from a firearm disability
177 granted under this sub-subparagraph has no effect on the loss of
178 civil rights, including firearm rights, for any reason other
179 than the particular adjudication of mental defectiveness or
180 commitment to a mental institution from which relief is granted.

181 ~~f.e.~~ Upon receipt of proper notice of relief from firearm
182 disabilities granted under sub-subparagraph ~~e. d.~~, the
183 department shall delete any mental health record of the person
184 granted relief from the automated database of persons who are
185 prohibited from purchasing a firearm based on court records of
186 adjudications of mental defectiveness or commitments to mental
187 institutions.

188 g. The department shall delete any mental health record of
189 a person subject to a preventative assessment 90 days after the
190 preventative assessment has been provided to the department,
191 unless the preventative assessment is renewed by the
192 psychiatrist or clinical psychologist before the expiration of
193 the 90-day period.

194 ~~h.f.~~ The department is authorized to disclose the collected
195 data to agencies of the Federal Government and other states for
196 use exclusively in determining the lawfulness of a firearm sale
197 or transfer. The department is also authorized to disclose any
198 collected data to the Department of Agriculture and Consumer
199 Services for purposes of determining eligibility for issuance of
200 a concealed weapons or concealed firearms license and for
201 determining whether a basis exists for revoking or suspending a
202 previously issued license pursuant to s. 790.06(10). When a
203 potential buyer or transferee appeals a nonapproval based on

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204 these records, the clerks of court and mental institutions
205 shall, upon request by the department, provide information to
206 help determine whether the potential buyer or transferee is the
207 same person as the subject of the record. Photographs and any
208 other data that could confirm or negate identity must be made
209 available to the department for such purposes, notwithstanding
210 any other provision of state law to the contrary. Any such
211 information that is made confidential or exempt from disclosure
212 by law shall retain such confidential or exempt status when
213 transferred to the department.

214 (9) This section shall become effective at such time as the
215 Department of Law Enforcement has notified all licensed
216 importers, licensed manufacturers, and licensed dealers in
217 writing that the procedures and toll-free number described in
218 this section are operational. This section shall remain in
219 effect only during such times as the procedures described in
220 subsection (2) remain operational.

221 (10) A licensed importer, licensed manufacturer, or
222 licensed dealer is not required to comply with the requirements
223 of this section in the event of:

224 (b) Failure of the Department of Law Enforcement to comply
225 with the requirements of subsections (2) and (3).

226 Section 3. This act shall take effect July 1, 2013.