

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Watson, B. offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (2) of section
 8 790.065, Florida Statutes, is amended to read:

9 790.065 Sale and delivery of firearms.—

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

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

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

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

19 3. Has had adjudication of guilt withheld or imposition of
 20 sentence suspended on any felony or misdemeanor crime of

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21 domestic violence unless 3 years have elapsed since probation or
22 any other conditions set by the court have been fulfilled or
23 expunction has occurred; or

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

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

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

39 (I) Involuntary ~~involuntary~~ commitment, commitment for
40 mental defectiveness or mental illness, and commitment for
41 substance abuse. The phrase includes involuntary inpatient
42 placement as defined in s. 394.467, involuntary outpatient
43 placement as defined in s. 394.4655, involuntary assessment and
44 stabilization under s. 397.6818, and involuntary substance abuse
45 treatment under s. 397.6957, but does not include a person in a
46 mental institution for observation or discharged from a mental
47 institution based upon the initial review by the physician or a
48 voluntary admission to a mental institution; or-

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49 (II) Notwithstanding (I), voluntary admission to a mental
50 institution for outpatient or inpatient treatment of a person
51 who had an involuntary examination under s. 394.463, and:

52 (A) The examining physician found that the person is an
53 imminent danger to himself or herself or others;

54 (B) The examining physician certified that if the person
55 did not agree to voluntary treatment, a petition for involuntary
56 outpatient or inpatient treatment would have been filed under s.
57 394.463(2)(i)4.;

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

65
66 "I understand that the doctor who examined me believes
67 I am a danger to myself or to others. I understand
68 that if I do not agree to voluntary treatment, the
69 doctor will file a petition in court to require me to
70 receive involuntary treatment. I understand that if
71 that petition is filed, I have the right to contest
72 it. I understand that by agreeing to voluntary
73 treatment in this situation, I may be prohibited from
74 buying firearms and from applying for or retaining a
75 concealed weapons or firearms license until I apply
76 for and receive relief from that restriction under

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77 Florida law."; and

78
79 (D) A judge or a magistrate has, pursuant to sub-sub-
80 subparagraph c.(II), reviewed the record of the finding,
81 certification, notice, and written acknowledgement classifying
82 the person as an imminent danger to himself or herself or
83 others, and approved such record for submittal to the
84 department.

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

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

97 (II) For persons committed to a mental institution pursuant
98 to sub-sub-subparagraph 4.b.(II), within 24 hours after the
99 person's agreement to voluntary admission, a record of the
100 finding, certification, notice, and written acknowledgement must
101 be filed with the clerk of the court for the county in which the
102 involuntary examination under s. 394.463 occurred. The clerk
103 must present the records to a judge or magistrate within 24
104 hours after receipt of the records. A judge or magistrate is

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105 required and has the lawful authority to review the records and,
106 if the judge or magistrate determines that the record supports
107 the classifying of the person as an imminent danger to himself
108 or herself or others, to approve the record for submittal to the
109 department. If a judge or magistrate approves the submittal of
110 the record to the department, the record must be submitted to
111 the department within 24 hours.

112 d. A person who has been adjudicated mentally defective or
113 committed to a mental institution, as those terms are defined in
114 this paragraph, may petition the circuit court that made the
115 adjudication or commitment, or the court that approved the
116 record for submittal to the department pursuant to sub-sub-
117 subparagraph c. (II), for relief from the firearm disabilities
118 imposed by such adjudication or commitment. A copy of the
119 petition shall be served on the state attorney for the county in
120 which the person was adjudicated or committed. The state
121 attorney may object to and present evidence relevant to the
122 relief sought by the petition. The hearing on the petition may
123 be open or closed as the petitioner may choose. The petitioner
124 may present evidence and subpoena witnesses to appear at the
125 hearing on the petition. The petitioner may confront and cross-
126 examine witnesses called by the state attorney. A record of the
127 hearing shall be made by a certified court reporter or by court-
128 approved electronic means. The court shall make written findings
129 of fact and conclusions of law on the issues before it and issue
130 a final order. The court shall grant the relief requested in the
131 petition if the court finds, based on the evidence presented
132 with respect to the petitioner's reputation, the petitioner's

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133 mental health record and, if applicable, criminal history
134 record, the circumstances surrounding the firearm disability,
135 and any other evidence in the record, that the petitioner will
136 not be likely to act in a manner that is dangerous to public
137 safety and that granting the relief would not be contrary to the
138 public interest. If the final order denies relief, the
139 petitioner may not petition again for relief from firearm
140 disabilities until 1 year after the date of the final order. The
141 petitioner may seek judicial review of a final order denying
142 relief in the district court of appeal having jurisdiction over
143 the court that issued the order. The review shall be conducted
144 de novo. Relief from a firearm disability granted under this
145 sub-subparagraph has no effect on the loss of civil rights,
146 including firearm rights, for any reason other than the
147 particular adjudication of mental defectiveness or commitment to
148 a mental institution from which relief is granted.

149 e. Upon receipt of proper notice of relief from firearm
150 disabilities granted under sub-subparagraph d., the department
151 shall delete any mental health record of the person granted
152 relief from the automated database of persons who are prohibited
153 from purchasing a firearm based on court records of
154 adjudications of mental defectiveness or commitments to mental
155 institutions.

156 f. The department is authorized to disclose ~~the~~ data
157 collected pursuant to this subparagraph ~~data~~ to agencies of the
158 Federal Government and other states for use exclusively in
159 determining the lawfulness of a firearm sale or transfer. The
160 department is also authorized to disclose this ~~any collected~~

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

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

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181 **T I T L E A M E N D M E N T**

182 Remove everything before the enacting clause and insert:
183 An act relating to the purchase of firearms by mentally ill
184 persons; amending s. 790.065, F.S.; providing conditions under
185 which a person who has been voluntarily admitted to a mental
186 institution for treatment and has undergone an involuntary
187 examination under the Baker Act may be prohibited from
188 purchasing a firearm; providing requirements for the examining

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189 physician; providing for judicial review of certain findings;
190 providing specified notice requirements; providing form and
191 contents of notice; providing requirements with respect to the
192 filing of specified records with the court and presentation of
193 such records to a judge or magistrate; providing lawful
194 authority of a judge or magistrate to review specified records
195 and submit such records to the Department of Law Enforcement;
196 providing a timeframe for submission of records to the
197 department upon approval of a record by a judge or magistrate;
198 providing an effective date.