

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 order that such records be submitted to  
 17          the Department of Law Enforcement; providing a  
 18          timeframe for submission of records to the department  
 19          upon order by a judge or magistrate; providing an  
 20          effective date.

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

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 24           Section 1. Paragraph (a) of subsection (2) of section  
 25   790.065, Florida Statutes, is amended to read:  
 26           790.065 Sale and delivery of firearms.—

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

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

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

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

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

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

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

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

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

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

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

74 (B) The examining physician certified that if the person  
75 did not agree to voluntary treatment, a petition for involuntary  
76 outpatient or inpatient treatment would have been filed under s.  
77 394.463(2)(i)4., or the examining physician certified that a  
78 petition was filed and the person subsequently agreed to  
79 voluntary treatment prior to a court hearing on the petition.

80 (C) Before agreeing to voluntary treatment, the person  
81 received written notice of that finding and certification, and  
82 written notice that as a result of such finding, he or she may

83 | be prohibited from purchasing a firearm, and may not be eligible  
84 | to apply for or retain a concealed weapon or firearms license  
85 | under s. 790.06 and the person acknowledged such notice in  
86 | writing, in substantially the following form:

87 |  
88 | "I understand that the doctor who examined me believes  
89 | I am a danger to myself or to others. I understand  
90 | that if I do not agree to voluntary treatment, a  
91 | petition will be filed in court to require me to  
92 | receive involuntary treatment. I understand that if  
93 | that petition is filed, I have the right to contest  
94 | it. In the event a petition has been filed, I  
95 | understand that I can subsequently agree to voluntary  
96 | treatment prior to a court hearing. I understand that  
97 | by agreeing to voluntary treatment in either of these  
98 | situations, I may be prohibited from buying firearms  
99 | and from applying for or retaining a concealed weapons  
100 | or firearms license until I apply for and receive  
101 | relief from that restriction under Florida law."

102 |  
103 | (D) A judge or a magistrate has, pursuant to sub-sub-  
104 | subparagraph c.(II), reviewed the record of the finding,  
105 | certification, notice, and written acknowledgement classifying  
106 | the person as an imminent danger to himself or herself or  
107 | others, and ordered that such record be submitted to the  
108 | department.

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

111 are prohibited from purchasing a firearm based on court records  
112 of adjudications of mental defectiveness or commitments to  
113 mental institutions.

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

121 (II) For persons committed to a mental institution  
122 pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
123 the person's agreement to voluntary admission, a record of the  
124 finding, certification, notice, and written acknowledgement must  
125 be filed by the administrator of the receiving or treatment  
126 facility, as defined in s. 394.455, with the clerk of the court  
127 for the county in which the involuntary examination under s.  
128 394.463 occurred. No fee shall be charged for the filing under  
129 this sub-sub-subparagraph. The clerk must present the records to  
130 a judge or magistrate within 24 hours after receipt of the  
131 records. A judge or magistrate is required and has the lawful  
132 authority to review the records ex parte and, if the judge or  
133 magistrate determines that the record supports the classifying  
134 of the person as an imminent danger to himself or herself or  
135 others, to order that the record be submitted to the department.  
136 If a judge or magistrate orders the submittal of the record to  
137 the department, the record must be submitted to the department  
138 within 24 hours.

139 |           d. A person who has been adjudicated mentally defective or  
140 | committed to a mental institution, as those terms are defined in  
141 | this paragraph, may petition the circuit court that made the  
142 | adjudication or commitment, or the court that ordered that the  
143 | record be submitted to the department pursuant to sub-sub-  
144 | subparagraph c.(II), for relief from the firearm disabilities  
145 | imposed by such adjudication or commitment. A copy of the  
146 | petition shall be served on the state attorney for the county in  
147 | which the person was adjudicated or committed. The state  
148 | attorney may object to and present evidence relevant to the  
149 | relief sought by the petition. The hearing on the petition may  
150 | be open or closed as the petitioner may choose. The petitioner  
151 | may present evidence and subpoena witnesses to appear at the  
152 | hearing on the petition. The petitioner may confront and cross-  
153 | examine witnesses called by the state attorney. A record of the  
154 | hearing shall be made by a certified court reporter or by court-  
155 | approved electronic means. The court shall make written findings  
156 | of fact and conclusions of law on the issues before it and issue  
157 | a final order. The court shall grant the relief requested in the  
158 | petition if the court finds, based on the evidence presented  
159 | with respect to the petitioner's reputation, the petitioner's  
160 | mental health record and, if applicable, criminal history  
161 | record, the circumstances surrounding the firearm disability,  
162 | and any other evidence in the record, that the petitioner will  
163 | not be likely to act in a manner that is dangerous to public  
164 | safety and that granting the relief would not be contrary to the  
165 | public interest. If the final order denies relief, the  
166 | petitioner may not petition again for relief from firearm

167 disabilities until 1 year after the date of the final order. The  
168 petitioner may seek judicial review of a final order denying  
169 relief in the district court of appeal having jurisdiction over  
170 the court that issued the order. The review shall be conducted  
171 de novo. Relief from a firearm disability granted under this  
172 sub-subparagraph has no effect on the loss of civil rights,  
173 including firearm rights, for any reason other than the  
174 particular adjudication of mental defectiveness or commitment to  
175 a mental institution from which relief is granted.

176 e. Upon receipt of proper notice of relief from firearm  
177 disabilities granted under sub-subparagraph d., the department  
178 shall delete any mental health record of the person granted  
179 relief from the automated database of persons who are prohibited  
180 from purchasing a firearm based on court records of  
181 adjudications of mental defectiveness or commitments to mental  
182 institutions.

183 f. The department is authorized to disclose data ~~the~~  
184 ~~collected pursuant to this subparagraph~~ data to agencies of the  
185 Federal Government and other states for use exclusively in  
186 determining the lawfulness of a firearm sale or transfer. The  
187 department is also authorized to disclose this ~~any collected~~  
188 data to the Department of Agriculture and Consumer Services for  
189 purposes of determining eligibility for issuance of a concealed  
190 weapons or concealed firearms license and for determining  
191 whether a basis exists for revoking or suspending a previously  
192 issued license pursuant to s. 790.06(10). When a potential buyer  
193 or transferee appeals a nonapproval based on these records, the  
194 clerks of court and mental institutions shall, upon request by

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195 | the department, provide information to help determine whether  
196 | the potential buyer or transferee is the same person as the  
197 | subject of the record. Photographs and any other data that could  
198 | confirm or negate identity must be made available to the  
199 | department for such purposes, notwithstanding any other  
200 | provision of state law to the contrary. Any such information  
201 | that is made confidential or exempt from disclosure by law shall  
202 | retain such confidential or exempt status when transferred to  
203 | the department.

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