

1 A bill to be entitled

2 An act relating to domestic violence; amending s.
3 741.2901, F.S.; requiring a court to order a defendant
4 arrested for an act of domestic violence not to
5 possess firearms or ammunition as a condition of bail
6 under certain circumstances; prohibiting an individual
7 with an outstanding warrant issued for an act of
8 domestic violence from possessing a firearm or any
9 ammunition; amending s. 790.065, F.S.; requiring the
10 Department of Law Enforcement, upon receipt of a
11 request for a criminal history record check, to review
12 available records to determine if a potential firearm
13 buyer or transferee has been charged with a crime of
14 domestic violence or has an outstanding warrant issued
15 for an act of domestic violence and is prohibited from
16 possessing firearms or ammunition; amending s. 901.02,
17 F.S.; authorizing a court to issue an arrest warrant
18 for an act of domestic violence; conforming a
19 provision to changes made by the act; amending ss.
20 493.6108, 790.06, and 943.0583, F.S.; conforming
21 cross-references; providing an effective date.

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

24
25 Section 1. Subsection (3) of section 741.2901, Florida

26 Statutes, is amended, and subsection (4) is added to that
27 section, to read:

28 741.2901 Domestic violence cases; prosecutors; legislative
29 intent; investigation; duty of circuits; first appearance.—

30 (3) Before ~~Prior to~~ a defendant's first appearance in any
31 charge of domestic violence as defined in s. 741.28, the State
32 Attorney's Office shall perform a thorough investigation of the
33 defendant's history, including, but not limited to, + prior
34 arrests for domestic violence, prior arrests for nondomestic
35 charges, prior injunctions for protection against domestic and
36 repeat violence filed listing the defendant as respondent and
37 noting history of other victims, and prior walk-in domestic
38 complaints filed against the defendant. This information must
39 ~~shall~~ be presented for consideration by the court at first
40 appearance, when setting bond, and when passing sentence, ~~for~~
41 ~~consideration by the court.~~ If ~~When~~ a defendant is arrested for
42 an act of domestic violence, the defendant must ~~shall~~ be held in
43 custody until he or she is brought before the court for
44 admittance to bail in accordance with chapter 903. In
45 determining bail, the court shall consider the safety of the
46 victim, the victim's children, and any other person who may be
47 in danger if the defendant is released. If a defendant is
48 arrested for an act of domestic violence, the court must order
49 the defendant not to possess a firearm or any ammunition as a
50 condition of bail if the court finds that the safety of the

51 victim, the victim's children, or others will likely be more
52 adequately assured.

53 (4) Notwithstanding subsection (3), an individual with an
54 outstanding warrant issued pursuant to s. 901.02(3) is
55 prohibited from possessing a firearm or any ammunition.

56 Section 2. Paragraph (a) of subsection (2) of section
57 790.065, Florida Statutes, is amended to read:

58 790.065 Sale and delivery of firearms.—

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

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

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

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

68 3. Has had adjudication of guilt withheld or imposition of
69 sentence suspended on any felony or misdemeanor crime of
70 domestic violence unless 3 years have elapsed since probation or
71 any other conditions set by the court have been fulfilled or
72 expunction has occurred; ~~or~~

73 4. Has been arrested for an act of domestic violence and
74 is prohibited from possessing a firearm or any ammunition under
75 s. 741.2901(3) or has an outstanding warrant issued pursuant to

76 | s. 901.02(3) and is prohibited from possessing a firearm or any
77 | ammunition; or

78 | 5. Has been adjudicated mentally defective or has been
79 | committed to a mental institution by a court or as provided in
80 | sub-sub-subparagraph b.(II), and as a result is prohibited by
81 | state or federal law from purchasing a firearm.

82 | a. As used in this subparagraph, "adjudicated mentally
83 | defective" means a determination by a court that a person, as a
84 | result of marked subnormal intelligence, or mental illness,
85 | incompetency, condition, or disease, is a danger to himself or
86 | herself or to others or lacks the mental capacity to contract or
87 | manage his or her own affairs. The phrase includes a judicial
88 | finding of incapacity under s. 744.331(6)(a), an acquittal by
89 | reason of insanity of a person charged with a criminal offense,
90 | and a judicial finding that a criminal defendant is not
91 | competent to stand trial.

92 | b. As used in this subparagraph, "committed to a mental
93 | institution" means:

94 | (I) Involuntary commitment, commitment for mental
95 | defectiveness or mental illness, and commitment for substance
96 | abuse. The phrase includes involuntary inpatient placement as
97 | defined in s. 394.467, involuntary outpatient placement as
98 | defined in s. 394.4655, involuntary assessment and stabilization
99 | under s. 397.6818, and involuntary substance abuse treatment
100 | under s. 397.6957, but does not include a person in a mental

101 institution for observation or discharged from a mental
102 institution based upon the initial review by the physician or a
103 voluntary admission to a mental institution; or

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

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

111 (B) The examining physician certified that if the person
112 did not agree to voluntary treatment, a petition for involuntary
113 outpatient or inpatient treatment would have been filed under s.
114 394.463(2)(g)4., or the examining physician certified that a
115 petition was filed and the person subsequently agreed to
116 voluntary treatment before ~~prior to~~ a court hearing on the
117 petition.

118 (C) Before agreeing to voluntary treatment, the person
119 received written notice of that finding and certification, and
120 written notice that as a result of such finding, he or she may
121 be prohibited from purchasing a firearm, and may not be eligible
122 to apply for or retain a concealed weapon or firearms license
123 under s. 790.06 and the person acknowledged such notice in
124 writing, in substantially the following form:

125

126 "I understand that the doctor who examined me believes I am a
127 danger to myself or to others. I understand that if I do not
128 agree to voluntary treatment, a petition will be filed in court
129 to require me to receive involuntary treatment. I understand
130 that if that petition is filed, I have the right to contest it.
131 In the event a petition has been filed, I understand that I can
132 subsequently agree to voluntary treatment before ~~prior to~~ a
133 court hearing. I understand that by agreeing to voluntary
134 treatment in either of these situations, I may be prohibited
135 from buying firearms and from applying for or retaining a
136 concealed weapons or firearms license until I apply for and
137 receive relief from that restriction under Florida law."
138

139 (D) A judge or a magistrate has, pursuant to sub-sub-
140 subparagraph c.(II), reviewed the record of the finding,
141 certification, notice, and written acknowledgment classifying
142 the person as an imminent danger to himself or herself or
143 others, and ordered that such record be submitted to the
144 department.

145 c. In order to check for these conditions, the department
146 shall compile and maintain an automated database of persons who
147 are prohibited from purchasing a firearm based on court records
148 of adjudications of mental defectiveness or commitments to
149 mental institutions.

150 (I) Except as provided in sub-sub-subparagraph (II),

151 clerks of court shall submit these records to the department
152 within 1 month after the rendition of the adjudication or
153 commitment. Reports shall be submitted in an automated format.
154 The reports must, at a minimum, include the name, along with any
155 known alias or former name, the sex, and the date of birth of
156 the subject.

157 (II) For persons committed to a mental institution
158 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
159 the person's agreement to voluntary admission, a record of the
160 finding, certification, notice, and written acknowledgment must
161 be filed by the administrator of the receiving or treatment
162 facility, as defined in s. 394.455, with the clerk of the court
163 for the county in which the involuntary examination under s.
164 394.463 occurred. No fee shall be charged for the filing under
165 this sub-sub-subparagraph. The clerk must present the records to
166 a judge or magistrate within 24 hours after receipt of the
167 records. A judge or magistrate is required and has the lawful
168 authority to review the records ex parte and, if the judge or
169 magistrate determines that the record supports the classifying
170 of the person as an imminent danger to himself or herself or
171 others, to order that the record be submitted to the department.
172 If a judge or magistrate orders the submittal of the record to
173 the department, the record must be submitted to the department
174 within 24 hours.

175 d. A person who has been adjudicated mentally defective or

176 committed to a mental institution, as those terms are defined in
177 this paragraph, may petition the court that made the
178 adjudication or commitment, or the court that ordered that the
179 record be submitted to the department pursuant to sub-sub-
180 subparagraph c.(II), for relief from the firearm disabilities
181 imposed by such adjudication or commitment. A copy of the
182 petition shall be served on the state attorney for the county in
183 which the person was adjudicated or committed. The state
184 attorney may object to and present evidence relevant to the
185 relief sought by the petition. The hearing on the petition may
186 be open or closed as the petitioner may choose. The petitioner
187 may present evidence and subpoena witnesses to appear at the
188 hearing on the petition. The petitioner may confront and cross-
189 examine witnesses called by the state attorney. A record of the
190 hearing shall be made by a certified court reporter or by court-
191 approved electronic means. The court shall make written findings
192 of fact and conclusions of law on the issues before it and issue
193 a final order. The court shall grant the relief requested in the
194 petition if the court finds, based on the evidence presented
195 with respect to the petitioner's reputation, the petitioner's
196 mental health record and, if applicable, criminal history
197 record, the circumstances surrounding the firearm disability,
198 and any other evidence in the record, that the petitioner will
199 not be likely to act in a manner that is dangerous to public
200 safety and that granting the relief would not be contrary to the

201 public interest. If the final order denies relief, the
202 petitioner may not petition again for relief from firearm
203 disabilities until 1 year after the date of the final order. The
204 petitioner may seek judicial review of a final order denying
205 relief in the district court of appeal having jurisdiction over
206 the court that issued the order. The review shall be conducted
207 de novo. Relief from a firearm disability granted under this
208 sub-subparagraph has no effect on the loss of civil rights,
209 including firearm rights, for any reason other than the
210 particular adjudication of mental defectiveness or commitment to
211 a mental institution from which relief is granted.

212 e. Upon receipt of proper notice of relief from firearm
213 disabilities granted under sub-subparagraph d., the department
214 shall delete any mental health record of the person granted
215 relief from the automated database of persons who are prohibited
216 from purchasing a firearm based on court records of
217 adjudications of mental defectiveness or commitments to mental
218 institutions.

219 f. The department is authorized to disclose data collected
220 pursuant to this subparagraph to agencies of the Federal
221 Government and other states for use exclusively in determining
222 the lawfulness of a firearm sale or transfer. The department is
223 also authorized to disclose this data to the Department of
224 Agriculture and Consumer Services for purposes of determining
225 eligibility for issuance of a concealed weapons or concealed

226 | firearms license and for determining whether a basis exists for
227 | revoking or suspending a previously issued license pursuant to
228 | s. 790.06(10). When a potential buyer or transferee appeals a
229 | nonapproval based on these records, the clerks of court and
230 | mental institutions shall, upon request by the department,
231 | provide information to help determine whether the potential
232 | buyer or transferee is the same person as the subject of the
233 | record. Photographs and any other data that could confirm or
234 | negate identity must be made available to the department for
235 | such purposes, notwithstanding any other provision of state law
236 | to the contrary. Any such information that is made confidential
237 | or exempt from disclosure by law shall retain such confidential
238 | or exempt status when transferred to the department.

239 | Section 3. Present subsections (3) and (4) of section
240 | 901.02, Florida Statutes, are redesignated as subsections (4)
241 | and (5), respectively, a new subsection (3) is added to that
242 | section, and present subsection (3) of that section is amended,
243 | to read:

244 | 901.02 Issuance of arrest warrants.—

245 | (3) Notwithstanding subsection (2), the court may issue an
246 | arrest warrant for an act of domestic violence in the same
247 | manner as in subsection (1).

248 | (4)~~(3)~~ A judge may electronically sign an arrest warrant
249 | if the requirements of subsection (1), ~~or~~ or subsection (2), or
250 | subsection (3) are met and the judge, based on an examination of

251 the complaint and proofs submitted, determines that the
 252 complaint:

253 (a) Bears the affiant's signature, or electronic signature
 254 if the complaint was submitted electronically.

255 (b) Is supported by an oath or affirmation administered by
 256 the judge or other person authorized by law to administer oaths.

257 (c) If submitted electronically, is submitted by reliable
 258 electronic means.

259 Section 4. Subsection (3) of section 493.6108, Florida
 260 Statutes, is amended to read:

261 493.6108 Investigation of applicants by Department of
 262 Agriculture and Consumer Services.—

263 (3) The department must also investigate the mental
 264 history and current mental and emotional fitness of any Class
 265 "G" or Class "K" applicant and may deny a Class "G" or Class "K"
 266 license to anyone who has a history of mental illness or drug or
 267 alcohol abuse. Notwithstanding s. 790.065(2)(a)5.f. ~~s.~~
 268 ~~790.065(2)(a)4.f.~~, the Department of Law Enforcement is
 269 authorized, for the limited purpose of determining eligibility
 270 of Class "G" or Class "K" applicants and licensees under this
 271 chapter, to provide the department with mental health and
 272 substance abuse data of individuals who are prohibited from
 273 purchasing a firearm.

274 Section 5. Subsection (2) of section 790.06, Florida
 275 Statutes, is amended to read:

276 | 790.06 License to carry concealed weapon or firearm.—
 277 | (2) The Department of Agriculture and Consumer Services
 278 | shall issue a license if the applicant:
 279 | (a) Is a resident of the United States and a citizen of
 280 | the United States or a permanent resident alien of the United
 281 | States, as determined by the United States Bureau of Citizenship
 282 | and Immigration Services, or is a consular security official of
 283 | a foreign government that maintains diplomatic relations and
 284 | treaties of commerce, friendship, and navigation with the United
 285 | States and is certified as such by the foreign government and by
 286 | the appropriate embassy in this country;
 287 | (b) Is 21 years of age or older;
 288 | (c) Does not suffer from a physical infirmity which
 289 | prevents the safe handling of a weapon or firearm;
 290 | (d) Is not ineligible to possess a firearm pursuant to s.
 291 | 790.23 by virtue of having been convicted of a felony;
 292 | (e) Has not been:
 293 | 1. Found guilty of a crime under the provisions of chapter
 294 | 893 or similar laws of any other state relating to controlled
 295 | substances within a 3-year period immediately preceding the date
 296 | on which the application is submitted; or
 297 | 2. Committed for the abuse of a controlled substance under
 298 | chapter 397 or under the provisions of former chapter 396 or
 299 | similar laws of any other state. An applicant who has been
 300 | granted relief from firearms disabilities pursuant to s.

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301 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law of
302 the state in which the commitment occurred is deemed not to be
303 committed for the abuse of a controlled substance under this
304 subparagraph;

305 (f) Does not chronically and habitually use alcoholic
306 beverages or other substances to the extent that his or her
307 normal faculties are impaired. It shall be presumed that an
308 applicant chronically and habitually uses alcoholic beverages or
309 other substances to the extent that his or her normal faculties
310 are impaired if the applicant has been convicted under s.
311 790.151 or has been deemed a habitual offender under s.
312 856.011(3), or has had two or more convictions under s. 316.193
313 or similar laws of any other state, within the 3-year period
314 immediately preceding the date on which the application is
315 submitted;

316 (g) Desires a legal means to carry a concealed weapon or
317 firearm for lawful self-defense;

318 (h) Demonstrates competence with a firearm by any one of
319 the following:

320 1. Completion of any hunter education or hunter safety
321 course approved by the Fish and Wildlife Conservation Commission
322 or a similar agency of another state;

323 2. Completion of any National Rifle Association firearms
324 safety or training course;

325 3. Completion of any firearms safety or training course or

326 class available to the general public offered by a law
327 enforcement agency, junior college, college, or private or
328 public institution or organization or firearms training school,
329 using instructors certified by the National Rifle Association,
330 Criminal Justice Standards and Training Commission, or the
331 Department of Agriculture and Consumer Services;

332 4. Completion of any law enforcement firearms safety or
333 training course or class offered for security guards,
334 investigators, special deputies, or any division or subdivision
335 of a law enforcement agency or security enforcement;

336 5. Presents evidence of equivalent experience with a
337 firearm through participation in organized shooting competition
338 or military service;

339 6. Is licensed or has been licensed to carry a firearm in
340 this state or a county or municipality of this state, unless
341 such license has been revoked for cause; or

342 7. Completion of any firearms training or safety course or
343 class conducted by a state-certified or National Rifle
344 Association certified firearms instructor;

345
346 A photocopy of a certificate of completion of any of the courses
347 or classes; an affidavit from the instructor, school, club,
348 organization, or group that conducted or taught such course or
349 class attesting to the completion of the course or class by the
350 applicant; or a copy of any document that shows completion of

351 the course or class or evidences participation in firearms
352 competition shall constitute evidence of qualification under
353 this paragraph. A person who conducts a course pursuant to
354 subparagraph 2., subparagraph 3., or subparagraph 7., or who, as
355 an instructor, attests to the completion of such courses, must
356 maintain records certifying that he or she observed the student
357 safely handle and discharge the firearm in his or her physical
358 presence and that the discharge of the firearm included live
359 fire using a firearm and ammunition as defined in s. 790.001;

360 (i) Has not been adjudicated an incapacitated person under
361 s. 744.331, or similar laws of any other state. An applicant who
362 has been granted relief from firearms disabilities pursuant to
363 s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law
364 of the state in which the adjudication occurred is deemed not to
365 have been adjudicated an incapacitated person under this
366 paragraph;

367 (j) Has not been committed to a mental institution under
368 chapter 394, or similar laws of any other state. An applicant
369 who has been granted relief from firearms disabilities pursuant
370 to s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the
371 law of the state in which the commitment occurred is deemed not
372 to have been committed in a mental institution under this
373 paragraph;

374 (k) Has not had adjudication of guilt withheld or
375 imposition of sentence suspended on any felony unless 3 years

376 | have elapsed since probation or any other conditions set by the
 377 | court have been fulfilled, or expunction has occurred;

378 | (1) Has not had adjudication of guilt withheld or
 379 | imposition of sentence suspended on any misdemeanor crime of
 380 | domestic violence unless 3 years have elapsed since probation or
 381 | any other conditions set by the court have been fulfilled, or
 382 | the record has been expunged;

383 | (m) Has not been issued an injunction that is currently in
 384 | force and effect and that restrains the applicant from
 385 | committing acts of domestic violence or acts of repeat violence;
 386 | and

387 | (n) Is not prohibited from purchasing or possessing a
 388 | firearm by any other provision of Florida or federal law.

389 | Section 6. Subsection (3) of section 943.0583, Florida
 390 | Statutes, is amended to read:

391 | 943.0583 Human trafficking victim expunction.—

392 | (3) A person who is a victim of human trafficking may
 393 | petition for the expunction of a criminal history record
 394 | resulting from the arrest or filing of charges for an offense
 395 | committed or reported to have been committed while the person
 396 | was a victim of human trafficking, which offense was committed
 397 | or reported to have been committed as a part of the human
 398 | trafficking scheme of which the person was a victim or at the
 399 | direction of an operator of the scheme, including, but not
 400 | limited to, violations under chapters 796 and 847, without

401 regard to the disposition of the arrest or of any charges.
402 However, this section does not apply to any offense listed in s.
403 775.084(1)(b)1. Determination of the petition under this section
404 should be by a preponderance of the evidence. A conviction
405 expunged under this section is deemed to have been vacated due
406 to a substantive defect in the underlying criminal proceedings.
407 If a person is adjudicated not guilty by reason of insanity or
408 is found to be incompetent to stand trial for any such charge,
409 the expunction of the criminal history record may not prevent
410 the entry of the judgment or finding in state and national
411 databases for use in determining eligibility to purchase or
412 possess a firearm or to carry a concealed firearm, as authorized
413 in s. 790.065(2)(a)5.c. ~~s. 790.065(2)(a)4.e.~~ and 18 U.S.C. s.
414 922(t), nor shall it prevent any governmental agency that is
415 authorized by state or federal law to determine eligibility to
416 purchase or possess a firearm or to carry a concealed firearm
417 from accessing or using the record of the judgment or finding in
418 the course of such agency's official duties.

419 Section 7. This act shall take effect July 1, 2020.