

By Senator Simmons

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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.-

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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.-

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59 (2) Upon receipt of a request for a criminal history record
60 check, the Department of Law Enforcement shall, during the
61 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 is
74 prohibited from possessing a firearm or any ammunition under s.
75 741.2901(3) or has an outstanding warrant issued pursuant to s.
76 901.02(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

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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

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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

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

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

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

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175 committed to a mental institution, as those terms are defined in
176 this paragraph, may petition the court that made the
177 adjudication or commitment, or the court that ordered that the
178 record be submitted to the department pursuant to sub-sub-
179 subparagraph c.(II), for relief from the firearm disabilities
180 imposed by such adjudication or commitment. A copy of the
181 petition shall be served on the state attorney for the county in
182 which the person was adjudicated or committed. The state
183 attorney may object to and present evidence relevant to the
184 relief sought by the petition. The hearing on the petition may
185 be open or closed as the petitioner may choose. The petitioner
186 may present evidence and subpoena witnesses to appear at the
187 hearing on the petition. The petitioner may confront and cross-
188 examine witnesses called by the state attorney. A record of the
189 hearing shall be made by a certified court reporter or by court-
190 approved electronic means. The court shall make written findings
191 of fact and conclusions of law on the issues before it and issue
192 a final order. The court shall grant the relief requested in the
193 petition if the court finds, based on the evidence presented
194 with respect to the petitioner's reputation, the petitioner's
195 mental health record and, if applicable, criminal history
196 record, the circumstances surrounding the firearm disability,
197 and any other evidence in the record, that the petitioner will
198 not be likely to act in a manner that is dangerous to public
199 safety and that granting the relief would not be contrary to the
200 public interest. If the final order denies relief, the
201 petitioner may not petition again for relief from firearm
202 disabilities until 1 year after the date of the final order. The
203 petitioner may seek judicial review of a final order denying

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204 relief in the district court of appeal having jurisdiction over
205 the court that issued the order. The review shall be conducted
206 de novo. Relief from a firearm disability granted under this
207 sub-subparagraph has no effect on the loss of civil rights,
208 including firearm rights, for any reason other than the
209 particular adjudication of mental defectiveness or commitment to
210 a mental institution from which relief is granted.

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

218 f. The department is authorized to disclose data collected
219 pursuant to this subparagraph to agencies of the Federal
220 Government and other states for use exclusively in determining
221 the lawfulness of a firearm sale or transfer. The department is
222 also authorized to disclose this data to the Department of
223 Agriculture and Consumer Services for purposes of determining
224 eligibility for issuance of a concealed weapons or concealed
225 firearms license and for determining whether a basis exists for
226 revoking or suspending a previously issued license pursuant to
227 s. 790.06(10). When a potential buyer or transferee appeals a
228 nonapproval based on these records, the clerks of court and
229 mental institutions shall, upon request by the department,
230 provide information to help determine whether the potential
231 buyer or transferee is the same person as the subject of the
232 record. Photographs and any other data that could confirm or

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233 negate identity must be made available to the department for
234 such purposes, notwithstanding any other provision of state law
235 to the contrary. Any such information that is made confidential
236 or exempt from disclosure by law shall retain such confidential
237 or exempt status when transferred to the department.

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

243 901.02 Issuance of arrest warrants.—

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

247 (4)~~(3)~~ A judge may electronically sign an arrest warrant if
248 the requirements of subsection (1), ~~or~~ or
249 subsection (3) are met and the judge, based on an examination of
250 the complaint and proofs submitted, determines that the
251 complaint:

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

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

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

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

260 493.6108 Investigation of applicants by Department of
261 Agriculture and Consumer Services.—

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

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

275 790.06 License to carry concealed weapon or firearm.-

276 (2) The Department of Agriculture and Consumer Services
277 shall issue a license if the applicant:

278 (a) Is a resident of the United States and a citizen of the
279 United States or a permanent resident alien of the United
280 States, as determined by the United States Bureau of Citizenship
281 and Immigration Services, or is a consular security official of
282 a foreign government that maintains diplomatic relations and
283 treaties of commerce, friendship, and navigation with the United
284 States and is certified as such by the foreign government and by
285 the appropriate embassy in this country;

286 (b) Is 21 years of age or older;

287 (c) Does not suffer from a physical infirmity which
288 prevents the safe handling of a weapon or firearm;

289 (d) Is not ineligible to possess a firearm pursuant to s.
290 790.23 by virtue of having been convicted of a felony;

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291 (e) Has not been:

292 1. Found guilty of a crime under the provisions of chapter
293 893 or similar laws of any other state relating to controlled
294 substances within a 3-year period immediately preceding the date
295 on which the application is submitted; or

296 2. Committed for the abuse of a controlled substance under
297 chapter 397 or under the provisions of former chapter 396 or
298 similar laws of any other state. An applicant who has been
299 granted relief from firearms disabilities pursuant to s.
300 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law of
301 the state in which the commitment occurred is deemed not to be
302 committed for the abuse of a controlled substance under this
303 subparagraph;

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

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

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

319 1. Completion of any hunter education or hunter safety

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320 course approved by the Fish and Wildlife Conservation Commission
321 or a similar agency of another state;

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

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

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

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

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

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

344

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

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

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

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

373 (k) Has not had adjudication of guilt withheld or
374 imposition of sentence suspended on any felony unless 3 years
375 have elapsed since probation or any other conditions set by the
376 court have been fulfilled, or expunction has occurred;

377 (l) Has not had adjudication of guilt withheld or

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378 imposition of sentence suspended on any misdemeanor crime of
379 domestic violence unless 3 years have elapsed since probation or
380 any other conditions set by the court have been fulfilled, or
381 the record has been expunged;

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

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

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

390 943.0583 Human trafficking victim expunction.—

391 (3) A person who is a victim of human trafficking may
392 petition for the expunction of a criminal history record
393 resulting from the arrest or filing of charges for an offense
394 committed or reported to have been committed while the person
395 was a victim of human trafficking, which offense was committed
396 or reported to have been committed as a part of the human
397 trafficking scheme of which the person was a victim or at the
398 direction of an operator of the scheme, including, but not
399 limited to, violations under chapters 796 and 847, without
400 regard to the disposition of the arrest or of any charges.
401 However, this section does not apply to any offense listed in s.
402 775.084(1)(b)1. Determination of the petition under this section
403 should be by a preponderance of the evidence. A conviction
404 expunged under this section is deemed to have been vacated due
405 to a substantive defect in the underlying criminal proceedings.
406 If a person is adjudicated not guilty by reason of insanity or

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407 is found to be incompetent to stand trial for any such charge,
408 the expunction of the criminal history record may not prevent
409 the entry of the judgment or finding in state and national
410 databases for use in determining eligibility to purchase or
411 possess a firearm or to carry a concealed firearm, as authorized
412 in s. 790.065(2)(a)5.c. ~~s. 790.065(2)(a)4.c.~~ and 18 U.S.C. s.
413 922(t), nor shall it prevent any governmental agency that is
414 authorized by state or federal law to determine eligibility to
415 purchase or possess a firearm or to carry a concealed firearm
416 from accessing or using the record of the judgment or finding in
417 the course of such agency's official duties.

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