

1 A bill to be entitled
2 An act relating to domestic violence; creating s.
3 784.04875, F.S.; prohibiting certain acts of domestic
4 violence or dating violence; providing criminal
5 penalties; amending s. 790.065, F.S.; revising a
6 prohibition on the sale or transfer of firearms to
7 persons convicted of misdemeanor domestic violence
8 offenses; amending s. 790.233, F.S.; defining the term
9 "misdemeanor offense of domestic violence";
10 prohibiting persons convicted of a misdemeanor offense
11 of domestic violence from possessing a firearm or
12 ammunition; requiring persons convicted of misdemeanor
13 offenses of domestic violence to surrender all
14 firearms and ammunition in their possession upon
15 conviction; requiring a court to order the defendant
16 to surrender to the local law enforcement agency all
17 firearms and ammunition and any license to carry a
18 concealed weapon or firearm; providing requirements
19 for law enforcement officers carrying out the court
20 order; authorizing a law enforcement officer to take
21 possession of all firearms and ammunition owned by the
22 defendant and any license to carry a concealed weapon
23 or firearm; authorizing a law enforcement officer to
24 seek a search warrant under certain circumstances;
25 requiring the law enforcement officer taking

26 possession of the firearms, ammunition, and license to
27 issue a receipt to the defendant, file the original
28 with the court, and ensure his or her law enforcement
29 agency retains a copy; requiring a court to make a
30 certain determination upon a sworn statement or
31 testimony that the defendant did not comply with the
32 required surrender of any firearms, ammunition, or
33 license; requiring the court to issue a warrant if it
34 finds that probable cause exists; providing for the
35 return of firearms, ammunition, and licenses to a
36 lawful owner under certain circumstances; requiring
37 all law enforcement agencies to develop certain
38 policies and procedures; authorizing a defendant to
39 elect to transfer all firearms and ammunition that he
40 or she owns to another person under certain
41 circumstances; providing criminal penalties; creating
42 s. 790.234, F.S.; defining the term "domestic
43 violence"; requiring a law enforcement officer to
44 remove firearms from the scene of an alleged act of
45 domestic violence under certain circumstances;
46 providing requirements for the law enforcement officer
47 removing such firearms; authorizing the owner of the
48 firearms to retake possession within a specified
49 timeframe; providing an exception; providing an
50 effective date.

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

Section 1. Section 784.04875, Florida Statutes, is created to read:

784.04875 Domestic violence.-A person who commits any act constituting domestic violence, as defined in s. 741.28, or any crime the underlying factual basis of which has been found by a court to include an act of domestic violence, knowing that the victim is in the class of persons covered by that statute, or dating violence, as defined in s. 784.046, knowing that the victim is in the class of persons covered by that statute, commits a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083.

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

790.065 Sale and delivery of firearms.-

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

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

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;
2. Has been convicted of a misdemeanor crime of domestic

76 | violence~~,~~ and~~,~~ therefore~~,~~ is prohibited from purchasing a
77 | firearm under 18 U.S.C. s. 922(d)(9) or s. 790.233;

78 | 3. Has had adjudication of guilt withheld or imposition of
79 | sentence suspended on any felony or misdemeanor crime of
80 | domestic violence~~,~~ unless 3 years have elapsed since probation
81 | or any other conditions set by the court have been fulfilled or
82 | expunction has occurred; or

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

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

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

99 | (I) Involuntary commitment, commitment for mental
100 | defectiveness or mental illness, and commitment for substance

101 abuse. The phrase includes involuntary inpatient placement under
102 ~~as defined in~~ s. 394.467, involuntary outpatient placement under
103 ~~as defined in~~ s. 394.4655, involuntary assessment and
104 stabilization under s. 397.6818, and involuntary substance abuse
105 treatment under s. 397.6957, but does not include a person in a
106 mental institution for observation or discharged from a mental
107 institution based upon the initial review by the physician or a
108 voluntary admission to a mental institution; or

109 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
110 admission to a mental institution for outpatient or inpatient
111 treatment of a person who had an involuntary examination under
112 s. 394.463 if, ~~where~~ each of the following conditions have been
113 met:

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

116 (B) The examining physician certified that if the person
117 did not agree to voluntary treatment, a petition for involuntary
118 outpatient or inpatient treatment would have been filed under s.
119 394.463(2)(g)4., or the examining physician certified that a
120 petition was filed and the person subsequently agreed to
121 voluntary treatment prior to a court hearing on the petition.

122 (C) Before agreeing to voluntary treatment, the person
123 received written notice of that finding and certification, and
124 written notice that as a result of such finding, he or she may
125 be prohibited from purchasing a firearm, and may not be eligible

126 to apply for or retain a concealed weapon or firearms license
127 under s. 790.06 and the person acknowledged such notice in
128 writing, in substantially the following form:

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

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

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

151 mental institutions.

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

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

176 within 24 hours.

177 d. A person who has been adjudicated mentally defective or
178 committed to a mental institution, as those terms are defined in
179 this paragraph, may petition the court that made the
180 adjudication or commitment, or the court that ordered that the
181 record be submitted to the department pursuant to sub-sub-
182 subparagraph c.(II), for relief from the firearm disabilities
183 imposed by such adjudication or commitment. A copy of the
184 petition shall be served on the state attorney for the county in
185 which the person was adjudicated or committed. The state
186 attorney may object to and present evidence relevant to the
187 relief sought by the petition. The hearing on the petition may
188 be open or closed as the petitioner may choose. The petitioner
189 may present evidence and subpoena witnesses to appear at the
190 hearing on the petition. The petitioner may confront and cross-
191 examine witnesses called by the state attorney. A record of the
192 hearing shall be made by a certified court reporter or by court-
193 approved electronic means. The court shall make written findings
194 of fact and conclusions of law on the issues before it and issue
195 a final order. The court shall grant the relief requested in the
196 petition if the court finds, based on the evidence presented
197 with respect to the petitioner's reputation, the petitioner's
198 mental health record and, if applicable, criminal history
199 record, the circumstances surrounding the firearm disability,
200 and any other evidence in the record, that the petitioner will

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

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

221 f. The department is authorized to disclose data collected
222 pursuant to this subparagraph to agencies of the Federal
223 Government and other states for use exclusively in determining
224 the lawfulness of a firearm sale or transfer. The department is
225 also authorized to disclose this data to the Department of

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

241 Section 3. Section 790.233, Florida Statutes, is amended
242 to read:

243 790.233 Possession of firearm or ammunition prohibited
244 when person is subject to an injunction against committing acts
245 of domestic violence, stalking, or cyberstalking; misdemeanor
246 domestic violence offenses; surrender of firearms and
247 ammunition; penalties.—

248 (2) As used in this section, the term "misdemeanor offense
249 of domestic violence" means a misdemeanor conviction for a
250 violation of s. 784.04875.

251 (3)~~(1)~~ A person may not have in his or her care, custody,
252 possession, or control a ~~any~~ firearm or any ammunition if the
253 person:

254 (a) Has been issued a final injunction that is currently
255 in force and effect, ~~restraining that person from committing~~
256 acts of domestic violence, as issued under s. 741.30, or from
257 committing acts of stalking or cyberstalking, as issued under s.
258 784.0485; or

259 (b) Has been convicted of a misdemeanor offense of
260 domestic violence.

261 (4) A person convicted of a misdemeanor offense of
262 domestic violence must, upon conviction, be required to
263 surrender all firearms and ammunition in his or her possession
264 as provided for in subsection (5).

265 (5) (a) Upon convicting a defendant of a misdemeanor
266 offense of domestic violence under this section, the court shall
267 order the defendant to surrender to the local law enforcement
268 agency all firearms and ammunition owned by the defendant which
269 are in the defendant's custody, control, or possession, except
270 as provided in subsection (6), and to surrender any license to
271 carry a concealed weapon or firearm issued under s. 790.06.

272 (b) The law enforcement officer carrying out the court
273 order shall request that the defendant immediately surrender all
274 firearms and ammunition owned by the defendant in his or her
275 custody, control, or possession and any license to carry a

276 concealed weapon or firearm issued under s. 790.06. The law
277 enforcement officer shall take possession of all surrendered
278 firearms and ammunition owned by the defendant and any license
279 to carry a concealed weapon or firearm issued under s. 790.06.
280 Alternatively, if personal service by a law enforcement officer
281 is not possible or is not required because the defendant was
282 present at the court hearing when the judge entered the order,
283 the defendant must surrender in a safe manner any firearms and
284 ammunition he or she owns and any license to carry a concealed
285 weapon or firearm issued under s. 790.06 to the control of the
286 local law enforcement agency immediately after being served with
287 the order by service or immediately after the hearing at which
288 the defendant was present. Notwithstanding ss. 933.02 and
289 933.18, a law enforcement officer may seek a search warrant from
290 a court of competent jurisdiction to conduct a search for
291 firearms or ammunition owned by the defendant if the officer has
292 probable cause to believe that there are firearms or ammunition
293 owned by the defendant in the defendant's custody, control, or
294 possession which have not been surrendered.

295 (c) At the time of surrender, a law enforcement officer
296 taking possession of any firearm or ammunition owned by the
297 defendant, or a license to carry a concealed weapon or firearm
298 issued under s. 790.06, shall issue a receipt identifying all
299 firearms surrendered, the quantity and type of ammunition
300 surrendered, and any license surrendered and shall provide a

301 copy of the receipt to the defendant. Within 72 hours after
302 service of the order, the law enforcement officer serving the
303 order shall file the original receipt with the court and shall
304 ensure that his or her law enforcement agency retains a copy of
305 the receipt.

306 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn
307 statement or testimony of any person alleging that the defendant
308 has failed to comply with the surrender of firearms or
309 ammunition owned by the defendant or of a license to carry a
310 concealed weapon or firearm under s. 790.06, as required by an
311 order issued under this subsection, the court shall determine
312 whether probable cause exists to believe that the defendant has
313 failed to surrender all firearms or ammunition owned by the
314 defendant, or a license to carry a concealed weapon or firearm
315 under s. 790.06, which are in the defendant's custody, control,
316 or possession. If the court finds that probable cause exists,
317 the court shall issue a warrant describing the firearms,
318 ammunition, or license owned by the defendant and authorizing a
319 search of the locations where the firearms, ammunition, or
320 license owned by the defendant are reasonably believed to be
321 found and requiring the seizure of any firearms, ammunition, or
322 license owned by the defendant discovered pursuant to such
323 search.

324 (e) If a person other than the defendant claims title to
325 any firearms or ammunition surrendered pursuant to this section

326 and he or she is determined by the law enforcement agency to be
327 the lawful owner of the firearms or ammunition, the firearms or
328 ammunition must be returned to him or her if:

329 1. The lawful owner agrees to store the firearms or
330 ammunition in a manner such that the defendant does not have
331 access to or control of the firearms or ammunition; and

332 2. The firearms or ammunition are not otherwise unlawfully
333 possessed by the owner.

334 (f) All law enforcement agencies must develop policies and
335 procedures regarding the acceptance, the storage, and the return
336 of firearms, ammunition, or licenses required to be surrendered
337 under this section.

338 (6) A defendant may elect to transfer all firearms and
339 ammunition he or she owns which have been surrendered to or
340 seized by a local law enforcement agency pursuant to subsection
341 (5) to another person who is willing to receive the defendant's
342 firearms and ammunition. The law enforcement agency must allow
343 such a transfer only if it is determined that the chosen
344 recipient:

345 (a) Is eligible to own or possess a firearm and ammunition
346 under federal and state law after confirmation through a
347 background check;

348 (b) Agrees to store the firearms and ammunition in a
349 manner such that the defendant does not have access to or
350 control of the firearms and ammunition; and

351 (c) Agrees not to transfer the firearms or ammunition back
 352 to the defendant.

353 (7)-(2) A person who violates this section ~~subsection (1)~~
 354 commits a misdemeanor of the first degree, punishable as
 355 provided in s. 775.082 or s. 775.083.

356 (1)-(3) It is the intent of the Legislature that the
 357 disabilities regarding possession of firearms and ammunition are
 358 consistent with federal law. Accordingly, this section does not
 359 apply to a state or local officer as defined in s. 943.10(14),
 360 holding an active certification, who receives or possesses a
 361 firearm or ammunition for use in performing official duties on
 362 behalf of the officer's employing agency, unless otherwise
 363 prohibited by the employing agency.

364 Section 4. Section 790.234, Florida Statutes, is created
 365 to read:

366 790.234 Domestic violence; temporary custody of firearms.-

367 (1) As used in this section, the term "domestic violence"
 368 means an act constituting domestic violence, as defined in s.
 369 741.28, and includes acts of domestic violence between dating
 370 partners as provided in s. 784.046(1)(d).

371 (2) When at the scene of an alleged act of domestic
 372 violence, a law enforcement officer must remove a firearm from
 373 the scene if:

374 (a) The law enforcement officer has probable cause to
 375 believe that an act of domestic violence has occurred; and

376 (b) The firearm is in plain view or is discovered during a
 377 consensual or other lawful search.

378 (3) If a firearm is removed from the scene under
 379 subsection (2), the law enforcement officer must:

380 (a) Provide to the owner a receipt identifying all
 381 firearms seized and information concerning the process for
 382 retaking possession of the firearm; and

383 (b) Provide for the safe storage of the firearm during the
 384 pendency of any proceeding related to the alleged act of
 385 domestic violence.

386 (4) Within 14 days after the conclusion of a proceeding on
 387 the alleged act of domestic violence or dating violence, the
 388 owner of the firearm may retake possession of the firearm unless
 389 ordered to surrender the firearm pursuant to s. 790.233.

390 Section 5. This act shall take effect October 1, 2020.