

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Infrastructure and Security

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BILL: SB 7028

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Public Safety

DATE: January 14, 2020

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Proctor</u>	<u>Miller</u>	_____	<b>IS Submitted as Comm. Bill/FAV</b>

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**I. Summary:**

SB 7028 addresses a number of issues related to public safety. The proposed bill:

- Requires select health care practitioners, emergency medical technicians and paramedics to disclose confidential communications to a law enforcement agency to the extent necessary to communicate a specific threat of serious bodily injury or death;
- Specifies a documentation process to use for the sale of a firearm when the seller is not a federal firearm licensee (FFL) and chooses not to use a FFL to complete the transaction;
- Creates a new section of statute to provide that a person may not sell, offer for sale, transfer or deliver any firearm to another person for consideration when any part of a transaction is conducted on property to which the public has the right of access, unless a criminal history records check of background information has been completed, and a unique approval number has been obtained from the Florida Department of Law Enforcement (FDLE);
- Provides a FFL may charge a fee to cover administrative costs for facilitating the sale or transfer of a firearm;
- Revises current requirements related to the safe storage of firearms to provide that loaded firearms must be securely stored to prevent access by minors under the age of 18, instead of the current threshold of 16, and expands the safe storage requirement to include preventing access by a person of unsound mind of any age;
- Provides that the FDLE will develop a statewide strategy for targeted violence prevention (STVP); and
- Provides for the 2020-2021 fiscal year, 37 full-time equivalent positions and the recurring sum of \$4,827,538 and the nonrecurring sum of \$1,043,415 from the General Revenue Fund to the FDLE for the purpose of implementing a statewide STVP.

Except for sections 7 and 8 of the bill, the bill's effective date is July 1, 2020. Sections 7 and 8, which relate to a statewide strategy for targeted violence prevention, are contingent on passage of SB 7030 creating a public records exemption for active threat assessment and active threat management records.

## II. Present Situation:

Targeted mass violence events have been occurring on a regular basis at public spaces such as schools and universities, at private businesses such as night clubs and a yoga studio, and at places of worship such as churches, mosques, and synagogues. While these events are relatively rare in comparison to the number of other types of violent crimes that occur on an annual basis, this mass violence has devastating impacts on victim's families and affected communities. This bill addresses a number of issues related to identifying, assessing and managing threats of violence, and related to sales of firearms by private parties and their safe storage. Because the bill addresses a range of related issues, the present situation for each issue in the bill is discussed below in conjunction with the Effect of the Proposed Changes.

## III. Effect of Proposed Changes:

### Threats: Duty to Warn (Sections 1. & 2.)

#### *Present Situation*

##### *Duties of Mental Health Professionals in Florida*

In Florida mental health providers must breach confidentiality with patients and warn of a threat to a third party where a patient has communicated a specific threat to cause serious bodily injury or death to an identified or readily available person.<sup>1</sup> The Legislature first added a dangerous patient exception to the confidentiality requirement for psychiatrists,<sup>2</sup> and later for psychologists<sup>3</sup> and for social workers and other mental health professionals.<sup>4</sup> Communications between a licensed or certified mental health worker and the patient or client are confidential, and may be waived, when there is “a specific threat to cause serious bodily injury or death to an identified or readily available person, and the person licensed or certified under this chapter makes a clinical judgment that the patient or client has the apparent intent and ability to imminently or immediately carry out such threat, and the person licensed or certified under this chapter communicates the information to the potential victim ...” and “to the extent necessary to communicate the threat to a law enforcement agency ...”<sup>5</sup>

The Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule does not prevent a health care provider from disclosing necessary information about a patient to law enforcement or other persons, when the provider in good faith believes that the patient presents a serious and imminent danger to himself or others.<sup>6</sup>

##### *Florida Risk Protection Orders*

In 2018, legislation was passed that created a process for a law enforcement officer to petition a court for a temporary ex parte risk protection order and a final risk protection order under s. 790.401, F.S., to temporarily prevent persons from accessing firearms when there is

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<sup>1</sup> Section 394.4615, F.S.

<sup>2</sup> Section 456.059, F.S.

<sup>3</sup> Section 490.0147, F.S.

<sup>4</sup> Section 491.0147, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> 45 CFR § 164.512(j)

demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.<sup>7</sup>

The court must find by clear and convincing evidence that a person poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm to issue a risk protection order.<sup>8</sup>

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.<sup>9</sup>

#### *Effect of Proposed Changes*

The bill amends s. 401.30, F.S., to require an emergency medical technician or paramedic to disclose confidential communications to a law enforcement agency to the extent necessary to communicate a threat if:

- A person has received basic life support or advanced life support from an emergency medical technician or a paramedic;
- Such person has communicated to the emergency medical technician or paramedic a specific threat to cause serious bodily injury or death to an identified or a readily available person; and
- The emergency medical technician or paramedic in good faith believes that the person has the apparent intent and ability to imminently or immediately carry out such threat.

The bill amends s. 456.059, F.S., to expand the list of health care practitioners that are required to disclose confidential communications to a law enforcement agency to the extent necessary to communicate a threat if:

- A patient has received health care services provided by a specified licensee;
- Such patient has communicated to the specified licensee a specific threat to cause serious bodily injury or death to an identified or a readily available person; and
- The specified licensee in good faith believes that the patient has the apparent intent and ability to imminently or immediately carry out such threat.

The expanded list now includes a health care practitioner certified or licensed under:

- Chapter 458 (Physician);
- Chapter 459 (Osteopathic Physician and Physician Assistants);
- Chapter 462 (Natureopathy and Naturopathy); and
- Part I of chapter 464 (Advanced Practice Registered Nurse, Licensed Practical Nurse, and Registered Nurse).

A law enforcement agency that receives notification of such threat must take appropriate action to prevent the risk of harm, including, but not limited to, notifying the potential victim of the threat or initiating a risk protection order.

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<sup>7</sup> Ch. 2018-3, s. 16, Laws of Fla.

<sup>8</sup> Section 790.401(3)(c), F.S.

<sup>9</sup> Section 790.401(3)(b), F.S.

The disclosure of confidential communications under a duty to warn may not be the basis of any legal action or criminal or civil liability against the emergency medical technician or paramedic or the specified health care practitioners.

### **Sale of a Firearm (Sections 3 - 5)**

#### ***Present Situation***

##### *Second Amendment*

The Second Amendment to the United States Constitution states, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>10</sup> Courts have consistently held that the Second Amendment is fully applicable to the states through the due process clause of the Fourteenth Amendment.<sup>11</sup>

State laws restricting gun possession and ownership have consistently been challenged on constitutional grounds. In *District of Columbia v. Heller*, a landmark case interpreting the Second Amendment, a special police officer brought action to enjoin the District of Columbia from enforcing gun-control statutes.<sup>12</sup>

The U.S. Supreme Court held that the Second Amendment does not protect the right of citizens to carry arms for any sort of confrontation, but rather that it guarantees the individual right to possess and carry weapons in case of confrontation.<sup>13</sup> The Court struck down the District of Columbia’s ban on handgun possession in the home and the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock because both provisions made it impossible for citizens to use arms for the core lawful purpose of self-defense, making such provisions unconstitutional.<sup>14</sup>

In *Heller*, the Court found that while the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited.<sup>15</sup> The Court noted that nothing in the *Heller* opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.<sup>16</sup> The Court also pointed out that its analysis does not suggest the invalidity of laws regulating the storage of firearms to prevent accidents.<sup>17</sup>

##### *Florida Constitution*

Article VIII, Section 5(b) of the Florida Constitution allows counties to require criminal history record checks and a 3 to 5-day waiting period for private sales of firearms made on property to which the public has access (gun shows, flea markets, firearm exhibitions, etc.). Ten counties

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<sup>10</sup> U.S. CONST. amend II.

<sup>11</sup> *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

<sup>12</sup> 554 U.S. 570 (2008).

<sup>13</sup> *Id.* at 592 and 595.

<sup>14</sup> *Id.* at 570.

<sup>15</sup> *Id.* at 595.

<sup>16</sup> *Id.* at 626 and 627

<sup>17</sup> *Id.* at 632.

have enacted ordinances under this provision.<sup>18</sup> For other private sales/transfers between individuals, there is no requirement for a criminal history record check.

#### *Firearm Purchase Process*

Firearms are available for purchase from primarily two groups of people: private citizens and FFLs. A private citizen does not necessarily engage in a business selling firearms but is able to sell firearms at a gun show or elsewhere, unless a county has enacted ordinances under Article VIII, Section 5(b) of the Florida Constitution. A FFL is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to sell or transfer a firearm. An individual must be licensed with the ATF to engage in the business of firearms.<sup>19</sup> A private citizen does not necessarily have to follow the processes required of FFLs.

#### *Private Firearm Sale “Loophole”*

The widely-used term “gun show loophole” refers to the difference between the way private sales or transfers of firearms occur as compared to the requirements that must be met by FFLs. A FFL must have the FDLE conduct a background check for all firearm purchases and deliveries and wait 3 days between the purchase and delivery of all handgun sales;<sup>20</sup> a person conducting a private transaction is not subject to these requirements.

#### *Background Checks*

FFL’s must facilitate a background check on a person making a firearm purchase from the dealer. The National Instant Criminal Background Check System (NICS) was established for dealers to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. s. 922(g) or (n), or state law.<sup>21</sup>

In Florida, the FDLE acts as the contact for a FFL initiating a background check.<sup>22</sup> The background check for firearm purchases queries five FDLE and FBI Criminal Justice Information Systems.<sup>23</sup> Of the 942,618 inquiries the FDLE received in 2018, over 96.8 percent

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<sup>18</sup> The 10 counties which have enacted ordinances under Article VIII, Section 5(b) of the Florida Constitution are Alachua, Broward, Dade, Hillsborough, Leon, Orange, Palm Beach, Pinellas, Sarasota, and Volusia. Email from the FDLE staff to Senate Committee on Infrastructure and Security staff on October 2, 2019 (on file with Senate Committee on Infrastructure and Security).

<sup>19</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses*, available at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls> (last visited October 15, 2019).

<sup>20</sup> Section 790.0655, F.S., the 3 day wait period expires upon completion of the records check, and does not apply in the following circumstances: when a firearm is being purchased by a holder of a concealed weapons permit; to a trade-in of another firearm; to the purchase of a rifle or shotgun, upon a person’s successfully completing a minimum of a 16-hour hunter safety course and possessing a hunter safety certification card; a person who is exempt from the hunter safety course requirements and holds a valid Florida hunting license for the purchase of a rifle or shotgun; and when a rifle or shotgun is being purchased by a law enforcement officer or correctional officer.

<sup>21</sup> FBI, *About NICS*, available at <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited October 15, 2019).

<sup>22</sup> Thirteen states have agencies that act as full “Points of Contact.” *Id.*

<sup>23</sup> Email from the FDLE staff to Senate Committee on Infrastructure and Security staff on October 17, 2019 (on file with Senate Committee on Infrastructure and Security).

received an initial decision approving the firearm transfer at the time the transaction was processed.<sup>24</sup>

All FFLs who sell firearms in Florida to persons must:

- Obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID;
- Collect a fee from the purchaser for processing the criminal history check of the purchaser;
- Contact the FDLE online or by means of a toll-free telephone number to conduct a criminal history check; and
- Receive an approval number from the FDLE and record the number on the consent form.<sup>25</sup>

#### *Firearm Purchase Disqualifiers*

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is a unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

In Florida, s. 790.065(2)(a), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.<sup>26</sup>
- Has been convicted of a misdemeanor crime of domestic violence,<sup>27</sup> and therefore is prohibited from purchasing a firearm.
- Has had a withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred.
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met.<sup>28</sup>

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<sup>24</sup> Email from the FDLE staff to Senate Committee on Infrastructure and Security staff on October 17, 2019 (on file with Senate Committee on Infrastructure and Security).

<sup>25</sup> Section 790.065(1), F.S. Other FFLs are exempt from these provisions.

<sup>26</sup> Section 790.23(1), F.S., provides that anyone who has been convicted of a felony in Florida, another state or a crime against the U.S. that would be a felony, or has committed a delinquent act in Florida or another state that would be a felony if committed by an adult and the person is under 24 years old is prohibited from possessing a firearm.

<sup>27</sup> Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>28</sup> Section 790.065(2)(a)4., F.S.

In Florida a person younger than 21 years of age may not purchase a firearm.<sup>29</sup> The prohibition does not apply to the purchase of a rifle or shotgun by a law enforcement officer,<sup>30</sup> correctional officer,<sup>31</sup> or servicemember.<sup>32</sup>

The FDLE must also determine if a person has any of the following in his or her background check that disqualifies him or her from purchasing a firearm:

- Has been indicted or had an information filed against her or him for a felony offense.
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her.
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her.
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.<sup>33</sup>
- Has been arrested for any of the offenses enumerated in s. 790.065, F.S.<sup>34</sup>

The FDLE has 24 working hours to make such determinations as to whether the potential buyer is prohibited from receiving or possessing a firearm.<sup>35</sup> Section 790.065(2)(c)2., F.S., defines working hours to mean from the hours from 8 a.m. to 5 p.m. Monday through Friday excluding legal holidays. However, it is worth noting that s. 790.0655(1)(a), F.S., imposes a mandatory 3 day waiting period between the purchase and delivery of a firearm, which expires upon completion of the records check required under s. 790.065, F.S., whichever occurs later.

The FDLE reports the following numbers and reasons for not approving a firearm sale during 2018:

- 3,580 for a felony conviction;
- 624 for being under indictment;
- 129 for being a fugitive from justice;
- 986 for being user or addicted to any controlled substance;

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<sup>29</sup> Section 790.065(13), F.S.

<sup>30</sup> Section 943.10(1), (6), and (8) includes law enforcement officer, part-time law enforcement officer, and auxiliary law enforcement officer.

<sup>31</sup> Section 943.10(2), (3), (7), and (9) includes correctional officer, correctional probation officer, part-time correctional officer, and auxiliary correctional officer.

<sup>32</sup> Section 250.01(19), F.S., defines “servicemember” as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

<sup>33</sup> Section 907.041(4)(a), F.S., specifies the following as a dangerous crime: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

<sup>34</sup> Section 790.065(2)(c), F.S., lists the following offenses: criminal anarchy under ss. 876.01 and 876.02, F.S.; Extortion under s. 836.05, F.S., explosives violations under s. 552.22(1) and (2), F.S.; controlled substances violations under ch. 893 F.S.; resisting an officer with violence under s. 843.01, F.S.; weapons and firearms violations under ch. 790, F.S.; treason under s. 876.32, F.S.; assisting self-murder under s. 782.08, F.S.; sabotage under s. 876.38, F.S.; stalking or aggravated stalking under s. 784.048, F.S.

<sup>35</sup> Section 790.065(2)(c)2., F.S.

- 860 for having been adjudicated as a mental defective or having been committed to any mental institution;
- 325 for being an illegal alien;
- 8 for having been dishonorably discharged from the Armed Forces;
- 2 for renouncing his or her U.S. citizenship;
- 1,004 for being subject to a protection order;
- 1,054 for a misdemeanor crime of domestic violence; and
- 2,184 for a state disqualifier.<sup>36</sup>

#### *Firearm Purchase Disability*

A person who has been adjudicated mentally defective or has been committed to a mental institution<sup>37</sup> cannot purchase a firearm in Florida until the firearm disability is removed by the court,<sup>38</sup> and may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained by the court.<sup>39</sup>

The term “adjudicated mentally defective” means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity,<sup>40</sup> an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>41</sup>

“Committed to a mental institution” means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes

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<sup>36</sup> The numbers reflect non-approvals as of October 16, 2019. E-mail from the FDLE staff to the Senate Committee on Infrastructure and Security, October 17, 2019 (on file with Senate Committee on Infrastructure and Security).

<sup>37</sup> Section 790.065(2)(a)4.b., F.S.

<sup>38</sup> Section 790.065(2)(a)4., F.S.

<sup>39</sup> Section 790.064(1), F.S.

<sup>40</sup> Section 744.331(6)(a), F.S., provides that a court should consider the person’s unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise.

<sup>41</sup> Section 790.065(2)(a)4.a., F.S.

involuntary inpatient placement,<sup>42</sup> involuntary outpatient placement,<sup>43</sup> involuntary<sup>44</sup> assessment and stabilization,<sup>45</sup> and involuntary substance abuse treatment,<sup>46</sup> but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.<sup>47</sup> The term also includes when a person has been involuntary examined under the Baker Act statute but then consents to voluntary inpatient or outpatient treatment if certain conditions are met.<sup>48</sup>

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<sup>42</sup> Section 394.467, F.S., provides a person may be ordered for involuntary inpatient placement if he or she has a mental illness and because of his or her mental illness: has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or is unable to determine for himself or herself whether inpatient placement is necessary; and is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and all available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

<sup>43</sup> Section 394.4655, F.S., provides a person may be ordered to involuntary outpatient services if the person is 18 years of age or older; has a mental illness; is unlikely to survive safely in the community without supervision, based on a clinical determination; has a history of lack of compliance with treatment for mental illness; the person has: at least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, F.S., or has received mental health services in a forensic or correctional facility; or engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months; as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary; in view of the person's treatment history and current behavior, is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1), F.S., it is likely that the person will benefit from involuntary outpatient services; and all available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

<sup>44</sup> A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a co-occurring mental health disorder and, because of such impairment or disorder: has lost the power of self-control with respect to substance abuse; and is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another. Section 397.675, F.S.

<sup>45</sup> A person who meets the criteria for involuntary admission may be admitted for a period of 5 days to a hospital or licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization. Sections 397.6811(1), and 397.6818, F.S.

<sup>46</sup> A person who meets the criteria for involuntary admission may be the subject of petition of a for involuntary treatment if the person has been placed under a protective custody within the previous 10 days; has been subject to an emergency admission within the previous 10 days; has been assessed by a qualified professional within 5 days; has been subject to involuntary assessment and stabilization within the previous 12 days; or has been subject to alternative involuntary admission within the previous 12 days. Sections 397.693 and 397.6957, F.S.

<sup>47</sup> Section 790.065(2)(a)4., F.S.

<sup>48</sup> Section 790.065(2)(a)4.b.(II), F.S.

A person with a firearm disability may petition the court that adjudicated or committed him or her to have the firearm disability removed. The petition must be served on the state attorney of the county in which the person was adjudicated or committed. The petitioner can choose whether the hearing is open or closed. The petitioner and the state attorney present evidence. The court must make written findings. For the firearm disability to be removed, the court must find that the petitioner will not be likely to act in a manner that is dangerous to public safety and that removing the firearm disability would not be contrary to the public interest. If the court denies the petition, the person must wait one year from the date of the final order denying the removal of the firearm disability to petition the court again for such relief.<sup>49</sup>

### ***Effect of Proposed Changes***

#### ***Private Sale of a Firearm***

The bill requires a person who is not a licensed importer, a licensed manufacturer, or a licensed dealer and who chooses to not use a licensed importer, a licensed manufacturer, or a licensed dealer to facilitate a private sale may sell his or her firearm to another person if all of the following requirements are met:

- The seller confirms by examining the purchaser's valid government-issued photo identification that the purchaser is 21 years of age or older and is therefore of a lawful age to purchase a firearm;
- The seller makes and preserves a dated record of the sale for each firearm which includes:
  - The make, model, and serial number of the firearm sold to the purchaser. This information about the firearm must match the information provided on the affidavit required under this paragraph for the private sale of a firearm;
  - The date of the sale;
  - The purchaser's name and date of birth and the identification number on the purchaser's valid government-issued photo identification. This information about the purchaser must match the information provided on the affidavit for private sale of a firearm; and
  - A copy of an affidavit for the private sale of a firearm signed by the purchaser and a notary public. The bill sets out a nonexclusive form for the required affidavit, but the affidavit must contain, at a minimum, substantially the following question:
    - Are you the actual purchaser of the firearm listed on this affidavit?
    - Are you under indictment or information in any court for a felony, or any other crime for which the judge could imprison you for more than 1 year?
    - Have you ever been convicted in any court of a felony, or any other crime for which the judge could have imprisoned you for more than 1 year, even if you received a shorter sentence, including probation, and not had your rights restored pursuant to law?
    - Are you a fugitive from justice?
    - Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?
    - Have you ever been adjudicated as mentally defective or have you ever been committed to a mental institution, and not had a petition for relief from the firearm disabilities imposed by such adjudication or commitment approved?

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<sup>49</sup> Section 790.065(2)(a)4.d., F.S.

- Have you been discharged from the United States Armed Forces under dishonorable conditions?
  - Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?
  - Have you ever been convicted in any court of a misdemeanor crime of domestic violence?
  - Are you under indictment or information in any court for a crime of domestic violence?
  - Have you ever renounced your United States citizenship?
  - Are you an alien illegally or unlawfully in the United States?
  - Are you an alien who has been admitted to the United States under a nonimmigrant visa?
- The seller has confirmed the purchaser's answer to each question on the affidavit for private sale of a firearm is "No"; and
  - The seller has no knowledge or reason to believe that the purchaser is of unsound mind.

A seller who does not meet all of the above requirements commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or 775.083.

*Sale, Delivery, or Transfer of Firearms on Property to Which the Public Has Access*

The bill defines "property to which the public has the right of access" to mean any property open for public access, regardless of whether an admission fee is charged, and includes, but is not limited to, a flea market, a gun show, and a firearm exhibit.

The bill creates a new section of statute to provide that a person may not sell, offer for sale, deliver, or transfer a firearm to another person for consideration if any part of the transaction is conducted on property to which the public has the right of access, unless a criminal history records check of background information has been completed, and the unique approval number set forth in statute under s. 790.065, F.S., has been obtained from the FDLE, and documented as required under s. 790.065(1)(a), F.S.

In the case of a seller or transferor who is not a FFL, compliance can be achieved by requesting that a FFL complete the requirements of s. 790.065(1)(a), F.S., which includes a criminal history records check of background information. Under this scenario a FFL may charge an administrative fee of an unlicensed seller or transferor to cover costs associated with completing the requirements of s. 790.065(1)(a), F.S.

A non-FFL seller or transferor shall prominently display next to any firearms being sold on property to which the public has the right of access the following information:

- The full legal name of the seller or transferor;
- The full legal name of a FFL who will be completing a transaction on behalf of the seller or transferor; and
- The license number of a FFL who will be completing a transaction on behalf of the seller or transferor.

A FFL who conducts a criminal history records check pursuant to the proposed bill must maintain the firearms transaction records in accordance with federal law. In addition, a copy of the firearms transaction record must be provided to the seller or transferor if they are not a FFL.

The bill provides that a person who sells or transfers a firearm contrary to the provisions of the proposed bill commits a misdemeanor of the first degree punishable as provided in ss. 775.082, or 775.083, F.S., for the first offense; and a felony of the third degree punishable under ss. 775.082, 775.083, or 775.084, F.S. for each subsequent offense after the first.

The bill applies the mandatory waiting period, exceptions, and penalties under s. 790.0655, F.S., to a firearm sold, offered for sale, transferred or delivered to another person for consideration when any part of the transaction is conducted on property to which the public has the right of access.

### **Safe Storage of Loaded Firearms (Section 6.)**

#### ***Present Situation***

In Florida, a person who stores or leaves, on a premise under his or her control, a loaded firearm, and who knows or reasonably should know that a minor (a person under the age of 16) is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without supervision, must keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure, or must secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within close proximity so it can be retrieve and used as easily and quickly as if carried.<sup>50</sup>

It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if a person fails to store or leave a firearm in the required manner and as a result a minor gains access to the firearm, and possesses or exhibits it:

- In a public place; or
- In a rude, careless, angry, or threatening manner.<sup>51</sup>

If a minor obtains a firearm as a result of an unlawful entry, then Florida's requirements for the safe storage of a loaded firearm do not apply.<sup>52</sup>

#### ***Effect of Proposed Changes***

The bill revises requirements related to the safe storage of firearms to provide that loaded firearms must be securely stored to prevent access by minors under the age of 18, instead of the current threshold of 16. The bill also expands the safe storage requirement to include preventing access by a person of unsound mind of any age. The current exception for carrying the firearm or having the firearm in close proximity and the penalty provisions are retained and are applicable to the new requirements.

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<sup>50</sup> Section 790.174, F.S.

<sup>51</sup> Section 790.174(2), F.S.

<sup>52</sup> Section 790.174, F.S.

## **Statewide Strategy for Targeted Violence Prevention (Sections 7. & 8.)**

### ***Present Situation***

#### ***Behavioral Threat Assessment and Management***

Florida has been the site of several mass shootings that include Pulse Nightclub in Orlando, Marjory Stoneman Douglas High School in Parkland, Fort Lauderdale-Hollywood International Airport, Jacksonville Landing, as well as a SunTrust Bank in Sebring. These acts of targeted violence underscore the need to focus additional resources toward threat identification and proactive efforts to prevent against future tragedies. As a result, Governor Ron DeSantis requested the FDLE to conduct a detailed review of Florida's readiness to prevent and mitigate targeted threats and incidents of violence. The Governor specifically requested that Florida develop a broader and more comprehensive threat assessment strategy, and appropriate training, to be used by local law enforcement agencies.<sup>53</sup>

FDLE defines Behavioral Threat Assessment and Management (BTAM) as a structured group process used to evaluate the risk posed by an individual, typically as a response to an actual or perceived threat or concerning behavior.<sup>54</sup> The primary purpose of a threat assessment is to identify individuals on a pathway to violence by collecting, corroborating and analyzing probative information from all sources, including published academic and operational research to contextualize and understand the patterned thinking and behavior of an identifiable person of concern<sup>55</sup> and make a determination as to whether or not the individual poses a threat of violence to a target. If an inquiry indicates that there is a risk of violence in a specific situation, authorities conducting the threat assessment collaborate with others to develop, implement, and monitor a strategic, individualized plan to directly or indirectly intervene in an identified person of concern's pattern of life through coordinated, operational activities designed to:

- Stabilize and support, to the extent possible, an identified person of concern's current situation;
- Influence, control, or incapacitate an identified person of concern's threat-enhancing thinking and behavior;
- Harden and protect any identifiable targets; and
- Mitigate concern to prevent targeted violence.<sup>56</sup>

Although several states have behavioral threat assessment and management programs embedded within their schools, none have attempted to develop and implement a statewide strategy to address all forms of targeted violence. According to subject matter experts, Florida's efforts to develop and implement such a comprehensive statewide strategy to address all incidents of violence, regardless of the incident location, positions the state at the forefront of this issue nationally.<sup>57</sup>

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<sup>53</sup> Press Release, Executive Office of the Governor, *Governor Ron DeSantis Directs FDLE to Prioritize Threat Assessment Strategy* (February 13, 2019), available at <https://www.flgov.com/2019/02/13/governor-ron-desantis-directs-fdle-to-prioritize-threat-assessment-strategy/> (last visited January 3, 2020).

<sup>54</sup> Email from the Department of Law Enforcement, *FDLE Response*, (January 4, 2020). On file with the Senate Committee on Infrastructure and Security.

<sup>55</sup> Vossekui, Fein, and Berglund, *Threat Assessment*, 2015.

<sup>56</sup> Calhoun and Weston, *Contemporary*, 2003; Amman et al., *Making Prevention*, 2017.

<sup>57</sup> Email from the Department of Law Enforcement, *FDLE Response*, (January 4, 2020). On file with the Senate Committee on Infrastructure and Security.

### *Effect of Proposed Changes*

The bill increases the duties of the Chief of FDLE to include:

- Oversight of the development of a statewide strategy for targeted violence prevention;
- Development of a comprehensive threat assessment strategy and appropriate training to be used by state and local law enforcement agencies; and
- Coordination with state and local law enforcement agencies in the development of the statewide strategy and its implementation.

Any statewide strategy for targeted violence prevention is required to be evaluated periodically, as determined by the FDLE, and after any event of targeted violence, to incorporate changes needed to address deficiencies and improve effectiveness.

In addition, the bill states that any statewide strategy for targeted violence prevention may not abrogate or diminish any person's right to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches as provided in the United States and Florida Constitutions, and in the laws of Florida and the Federal Government, including, but not limited to, s. 933.04, F.S.

The bill, for fiscal year 2020-2021, provides 37 full-time equivalent positions and the recurring sum of \$4,827,538 and the nonrecurring sum of \$1,043,415 from the General Revenue Fund to the FDLE for the purpose of implementing a statewide strategy for targeted violence prevention.

The bill links the development of a statewide strategy for targeted violence prevention, and the funding for it, to the passage of a public records exemption bill for active threat assessment and active threat management records.

Except for sections 7 and 8 of the bill, the bill's effective date is July 1, 2020. Sections 7 and 8, which relate to a statewide strategy for targeted violence prevention, are contingent on passage of SB 7030 creating a public records exemption for active threat assessment and active threat management records.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost of a firearm criminal history record check is currently set at \$5.00.<sup>58, 59</sup>

All non-FFL firearm sales conducted on property to which the public has the right of access must be completed through a FFL who may charge an administrative fee. No minimum or maximum set amount is provided within the bill.

C. Government Sector Impact:

The cost of a firearm criminal history record check is currently set at \$5.00.<sup>60</sup>

There is no accurate way to measure the number of private firearm transfers that occur within Florida on property to which the public has the right of access. However, recent surveys estimate approximately 20% of all firearm sales (nationwide) are private sales.<sup>61</sup> There may be a workload increase to the FDLE to the extent that the bill increases the number of required background checks due to certain private sales of firearms being completed through a FFL.

The bill, for fiscal year 2020-2021, provides 37 full-time equivalent positions with an associated total salary rate of 2,045,705 and the recurring sum of \$4,827,538 and the nonrecurring sum of \$1,043,415 to be appropriated from the General Revenue Fund to the FDLE for the purpose of implementing a statewide strategy for targeted violence prevention.

**VI. Technical Deficiencies:**

None.

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<sup>58</sup> Section 790.065(1)(1)2., F.S., states “the fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction”.

<sup>59</sup> Florida Department of Law Enforcement, Agency Analysis of 2020 Senate Bill 94 (October 1, 2020). On file with the Senate Committee on Infrastructure and Security.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following section of the Florida Statutes: 401.30, 456.059, 790.065, 790.0655, 790.174, and 943.0311.

This bill creates the following section of the Florida Statutes: 790.0653.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.