

By Senator Polsky

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1 A bill to be entitled
2 An act relating to firearms; amending s. 790.065,
3 F.S.; requiring the Department of Law Enforcement,
4 within a specified timeframe, to enter into the
5 Florida Crime Information Center database certain
6 orders affecting a person's ability to purchase a
7 firearm; amending s. 790.401, F.S.; prohibiting
8 attempted violations of the provisions of a firearms
9 risk protection order; providing criminal penalties;
10 providing an effective date.

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

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14 Section 1. Paragraph (a) of subsection (2) of section
15 790.065, Florida Statutes, is amended to read:

16 790.065 Sale and delivery of firearms.—

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

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

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

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

26 3. Has had adjudication of guilt withheld or imposition of
27 sentence suspended on any felony or misdemeanor crime of
28 domestic violence unless 3 years have elapsed since probation or
29 any other conditions set by the court have been fulfilled or

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30 expunction has occurred; or

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

35 a. As used in this subparagraph, "adjudicated mentally
36 defective" means a determination by a court that a person, as a
37 result of marked subnormal intelligence, or mental illness,
38 incompetency, condition, or disease, is a danger to himself or
39 herself or to others or lacks the mental capacity to contract or
40 manage his or her own affairs. The phrase includes a judicial
41 finding of incapacity under s. 744.331(6)(a), an acquittal by
42 reason of insanity of a person charged with a criminal offense,
43 and a judicial finding that a criminal defendant is not
44 competent to stand trial.

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

47 (I) Involuntary commitment, commitment for mental
48 defectiveness or mental illness, and commitment for substance
49 abuse. The phrase includes involuntary inpatient placement as
50 defined in s. 394.467, involuntary outpatient placement as
51 defined in s. 394.4655, involuntary assessment and stabilization
52 under s. 397.6818, and involuntary substance abuse treatment
53 under s. 397.6957, but does not include a person in a mental
54 institution for observation or discharged from a mental
55 institution based upon the initial review by the physician or a
56 voluntary admission to a mental institution; or

57 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
58 admission to a mental institution for outpatient or inpatient

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59 treatment of a person who had an involuntary examination under
60 s. 394.463, where each of the following conditions have been
61 met:

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

64 (B) The examining physician certified that if the person
65 did not agree to voluntary treatment, a petition for involuntary
66 outpatient or inpatient treatment would have been filed under s.
67 394.463(2)(g)4., or the examining physician certified that a
68 petition was filed and the person subsequently agreed to
69 voluntary treatment prior to a court hearing on the petition.

70 (C) Before agreeing to voluntary treatment, the person
71 received written notice of that finding and certification, and
72 written notice that as a result of such finding, he or she may
73 be prohibited from purchasing a firearm, and may not be eligible
74 to apply for or retain a concealed weapon or firearms license
75 under s. 790.06 and the person acknowledged such notice in
76 writing, in substantially the following form:

77
78 "I understand that the doctor who examined me believes I am a
79 danger to myself or to others. I understand that if I do not
80 agree to voluntary treatment, a petition will be filed in court
81 to require me to receive involuntary treatment. I understand
82 that if that petition is filed, I have the right to contest it.
83 In the event a petition has been filed, I understand that I can
84 subsequently agree to voluntary treatment prior to a court
85 hearing. I understand that by agreeing to voluntary treatment in
86 either of these situations, I may be prohibited from buying
87 firearms and from applying for or retaining a concealed weapons

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88 or firearms license until I apply for and receive relief from
89 that restriction under Florida law.”

90

91 (D) A judge or a magistrate has, pursuant to sub-sub-
92 subparagraph c.(II), reviewed the record of the finding,
93 certification, notice, and written acknowledgment classifying
94 the person as an imminent danger to himself or herself or
95 others, and ordered that such record be submitted to the
96 department.

97 c. In order to check for these conditions, the department
98 shall compile and maintain an automated database of persons who
99 are prohibited from purchasing a firearm based on court records
100 of adjudications of mental defectiveness or commitments to
101 mental institutions.

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

108 (II) For persons committed to a mental institution pursuant
109 to sub-sub-subparagraph b.(II), within 24 hours after the
110 person's agreement to voluntary admission, a record of the
111 finding, certification, notice, and written acknowledgment must
112 be filed by the administrator of the receiving or treatment
113 facility, as defined in s. 394.455, with the clerk of the court
114 for the county in which the involuntary examination under s.
115 394.463 occurred. No fee shall be charged for the filing under
116 this sub-sub-subparagraph. The clerk must present the records to

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117 a judge or magistrate within 24 hours after receipt of the
118 records. A judge or magistrate is required and has the lawful
119 authority to review the records ex parte and, if the judge or
120 magistrate determines that the record supports the classifying
121 of the person as an imminent danger to himself or herself or
122 others, to order that the record be submitted to the department.
123 The department must enter the record into the Florida Crime
124 Information Center (FCIC) database of persons prohibited from
125 purchasing a firearm. If a judge or magistrate orders the
126 submittal of the record to the department, the record must be
127 submitted to the department and entered into the FCIC within 24
128 hours.

129 d. A person who has been adjudicated mentally defective or
130 committed to a mental institution, as those terms are defined in
131 this paragraph, may petition the court that made the
132 adjudication or commitment, or the court that ordered that the
133 record be submitted to the department pursuant to sub-sub-
134 subparagraph c.(II), for relief from the firearm disabilities
135 imposed by such adjudication or commitment. A copy of the
136 petition shall be served on the state attorney for the county in
137 which the person was adjudicated or committed. The state
138 attorney may object to and present evidence relevant to the
139 relief sought by the petition. The hearing on the petition may
140 be open or closed as the petitioner may choose. The petitioner
141 may present evidence and subpoena witnesses to appear at the
142 hearing on the petition. The petitioner may confront and cross-
143 examine witnesses called by the state attorney. A record of the
144 hearing shall be made by a certified court reporter or by court-
145 approved electronic means. The court shall make written findings

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146 of fact and conclusions of law on the issues before it and issue
147 a final order. The court shall grant the relief requested in the
148 petition if the court finds, based on the evidence presented
149 with respect to the petitioner's reputation, the petitioner's
150 mental health record and, if applicable, criminal history
151 record, the circumstances surrounding the firearm disability,
152 and any other evidence in the record, that the petitioner will
153 not be likely to act in a manner that is dangerous to public
154 safety and that granting the relief would not be contrary to the
155 public interest. If the final order denies relief, the
156 petitioner may not petition again for relief from firearm
157 disabilities until 1 year after the date of the final order. The
158 petitioner may seek judicial review of a final order denying
159 relief in the district court of appeal having jurisdiction over
160 the court that issued the order. The review shall be conducted
161 de novo. Relief from a firearm disability granted under this
162 sub-subparagraph has no effect on the loss of civil rights,
163 including firearm rights, for any reason other than the
164 particular adjudication of mental defectiveness or commitment to
165 a mental institution from which relief is granted.

166 e. Upon receipt of proper notice of relief from firearm
167 disabilities granted under sub-subparagraph d., the department
168 shall delete any mental health record of the person granted
169 relief from the automated database of persons who are prohibited
170 from purchasing a firearm based on court records of
171 adjudications of mental defectiveness or commitments to mental
172 institutions, and shall delete the person's record from the
173 FCIC.

174 f. The department is authorized to disclose data collected

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175 pursuant to this subparagraph to agencies of the Federal
176 Government and other states for use exclusively in determining
177 the lawfulness of a firearm sale or transfer. The department is
178 also authorized to disclose this data to the Department of
179 Agriculture and Consumer Services for purposes of determining
180 eligibility for issuance of a concealed weapons or concealed
181 firearms license and for determining whether a basis exists for
182 revoking or suspending a previously issued license pursuant to
183 s. 790.06(10). When a potential buyer or transferee appeals a
184 nonapproval based on these records, the clerks of court and
185 mental institutions shall, upon request by the department,
186 provide information to help determine whether the potential
187 buyer or transferee is the same person as the subject of the
188 record. Photographs and any other data that could confirm or
189 negate identity must be made available to the department for
190 such purposes, notwithstanding any other provision of state law
191 to the contrary. Any such information that is made confidential
192 or exempt from disclosure by law shall retain such confidential
193 or exempt status when transferred to the department.

194 Section 2. Paragraph (b) of subsection (11) of section
195 790.401, Florida Statutes, is amended to read:

196 790.401 Risk protection orders.—

197 (11) PENALTIES.—

198 (b)1. A person who has in his or her custody or control a
199 firearm or any ammunition or who purchases, possesses, or
200 receives a firearm or any ammunition with knowledge that he or
201 she is prohibited from doing so by an order issued under this
202 section commits a felony of the third degree, punishable as
203 provided in s. 775.082, s. 775.083, or s. 775.084.

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204 2. A person who attempts to commit a violation of
205 subparagraph 1. commits a misdemeanor of the first degree,
206 punishable as provided in s. 775.082 or s. 775.083.

207 Section 3. This act shall take effect October 1, 2022.